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VOL. XXX APRIL, 1936 NO. 2

CONTENTS

The Legislature and the Administration, I ..... John A. Fairlie 241
Federal Administrative Regions ..... James W. Fesler 257
American Government and Politics .....
  Business Conditions in Presidential Election Years ..... W. F. Ogburn and A. J. Jaffe 269
  State Constitutional Development in 1935 ..... George C. S. Benson 275
  Direct Primary Legislation in 1934–35 ..... Louise Overacker 279
  New Mexico: A Problem of Parochialism in Transition ..... John T. Russell 285
Public Administration .....
  "Preliminary Hearings" in Naturalization Administration ..... Luella Gettys 288
Judicial Affairs ..... Walter F. Dodd (ed.)
  Judicial Influence ..... Rodney L. Mott 295
  The Selection of Judges in Chicago ..... Edward M. Martin 315
Foreign Governments and Politics .....
  The Nazis Reform the Reich ..... Albert Lepawsky 324
  The Liquidation of the German Länder ..... Roger H. Wells 350
News and Notes, Personal and Miscellaneous ..... Managing Editor 362
Book Reviews and Notices 369
Recent Publications of Political Interest .....
  Books and Periodicals ..... Charles S. Hyneman 417
  Government Publications ..... Miles O. Price 445

(For list of Book Reviews, see next page)

Published Bi-monthly by
THE AMERICAN POLITICAL SCIENCE ASSOCIATION

Publication Office, 450-458 Ahnaip St., Menasha, Wis.

Editorial Office
209 South Hall
University of Wisconsin
Madison, Wisconsin

Secretary of the Association
205 Bennett Hall
University of Pennsylvania
Philadelphia, Pennsylvania

Foreign Agents, P. S. King and Son, Ltd., Great Smith St., Westminster, London

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Entered as second class matter at the post office at Menasha, Wis., under the Act of August 4, 1912.
Acceptance for mailing at special rate of postage provided for in Section 1103,
Act of October 3, 1917, authorized May 12, 1926

Made in the United States of America

REVIEWS OF BOOKS

Luce, Legislative Problems. W. F. Willoughby.................. 369
Sharfman, The Interstate Commerce Commission of the United States, Part III, Vol. A. Frederick F. Blachly.............. 371
Swisher, Roger B. Taney; *Smith*, Roger B. Taney, Jacksonian Jurist. Edward S. Corwin.................................. 372
Schattschneider, Politics, Pressures, and the Tariff. E. Pendleton Herring.. 374
Laski, Jennings, Robson, et al., A Century of Municipal Progress, 1835–1935. William B. Munro.......................... 375
Van de Woestyne, State Control of Local Finance in Massachusetts. William Anderson.................................... 377
Seymour, American Neutrality, 1914–1917; *Dulles and Armstrong*, Can We Be Neutral? Charles G. Fenwick.................. 377
Staley, War and the Private Investor. Francis A. Linville........ 379
Finer, Mussolini's Italy. Karl Loewenstein...................... 380
Seldes, Sawdust Caesar. Henry R. Spencer..................... 384
Clark, The Fall of the German Republic. Karl F. Geiser......... 385
Sutton (ed.), Gustav Stresemann; His Diaries, Letters, and Papers. Roger H. Wells.. 386
Lewis, The Genossenschaft-Theory of Otto von Gierke. Carl J. Friedrich.. 387
Doob, Propaganda; Its Psychology and Technique. Harwood L. Childs.. 389
Irwin, Propaganda and the News. Ralph D. Casey.............. 390
Bingham, Insurgent America. Charles McKinley................ 391
Briefer Notices.. 392
Sayre, America Must Act; *Sageser*, The First Two Decades of the Pendleton Act; *Carpenter and Stafford*, State and Local Government in the United States; *Benson*, The Administration of the Civil Service in Massachusetts; *Coleman*, State Administration in South Carolina; *Sheldon*, Populism in the Old Dominion; *Reid*, The Manchu Abdication and the Powers; *Puryear*, International Economics and Diplomacy in the Near East; *Hudson*, By Pacific Means; *Wright*, The St. Lawrence Deep Waterway; *Nock*, Our Enemy, the State; *Eldridge*, Public Intelligence; etc.

The American Political Science Review, published bi-monthly, is supplied to all members of the American Political Science Association. The annual dues are $5.00 a year ($3.00 for graduate and undergraduate students in colleges and universities).

Single numbers of the Review are sold as follows: Vols. I–VIII, $1.50 each; Vols. IX–XXV (1915–31), $1.25 each; Vol. XXVI (1932) and following, $1.00 each.

Applications for membership, orders for the Review, and remittances should be addressed to 450–458 Ahnaip St., Menasha, Wis., or to Clyde L. King, Secretary-Treasurer, 205 Bennett Hall, University of Pennsylvania, Philadelphia, Pa.

Correspondence concerning contributions to the Review—likewise books submitted for review—should be addressed to Frederic A. Ogg, Managing Editor, 209 South Hall, University of Wisconsin, Madison, Wis.

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The American Political Science Review

VOL. XXX APRIL, 1936 NO. 2

THE LEGISLATURE AND THE ADMINISTRATION, I

JOHN A. FAIRLIE
University of Illinois

Mr. W. F. Willoughby, in his *Principles of Public Administration,* holds that "the function of direction, supervision, and control of the administrative activities of the government resides in the legislative branch of the government." More specifically, he states that, "in the case of our national government at least, Congress is the source of all administrative authority."[1] It may be suggested however, that an examination of existing systems of government shows a large amount of variation in this respect, and that three main systems may be recognized.

These three main systems may be noted in private as well as in public administration. In undertakings managed directly by a single person, he at the same time is the organizer of the business and conducts its operation. This may be called an autochthonous administration. In collective groups, or societies, a distinction appears between the determination of general policies by the group or society (or by a general committee) and the actual management by the officers or agencies set up by the central group for certain purposes. Most large business enterprises are conducted by corporations, operating under a charter or law which establishes some features of the organization, usually providing a board of directors with authority to organize the administration in more detail; while the direct conduct of operations is carried on, under the general supervision of officials provided for by the charter, by subordinate agencies set up by the board of directors.

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[1] *Principles of Public Administration*, p. 11; *Principles of Legislative Organization and Administration*, p. 116. In support of these statements, he cites opinions of the United States Circuit and Supreme Courts in 1835 and a report of a Senate committee in 1881. But the Supreme Court opinion does not fully sustain his statement. On the other hand may be cited opinions of several attorneys-general, notably Caleb Cushing in 1855, and also other opinions of the Supreme Court. Cf. Fairlie, *National Administration of the United States*, pp. 7–19; 6 Op. Atty-Gen. 10, 365; 7 *ibid.*, 453, 470; 8 *ibid.*, 343; 10 *ibid.*, 413; U. S. v. MacDaniel, 7 Peters 14 (1833); Wells v. Nickels, 104 U. S. 444; U. S. v. San Jacinto Tin Co., 102 U. S. 273, 279; *In re* Neagle, 135 U. S. 1, 63, 67, 75.

In public administration, the same three systems may also be recognized. In an absolute monarchy, the head of the state is at the same time both the organizer and the general manager of the governmental administration, though in a government of some importance he is likely to delegate the active supervision to one or more officials. In a government like that of Great Britain, where the king in Parliament is recognized as the sovereign, subject to no legal limitations, the ultimate authority to organize and control the administration is in the Parliament. But this is modified by customary practices and by the delegation of important powers to executive officials.

In most governments of the present day, the basic organization is established by a written constitution, which may be compared in some respects to the charter of a business corporation. The constitution provides for certain agencies, usually including an elected representative body, with powers of legislation and control over the administration, subject, however, to powers conferred on the chief executive and often on other agencies also provided for by the constitution. With variations in constitutional provisions and in practice, these systems differ widely, from that in France, which approximates to the British system of parliamentary control, to those of some of the recent dictatorships which approach that of the absolute monarchy, subject, however, to a possible change by the electorate.

The Constitution of the United States is an early and leading example of the last-mentioned system. It provides for a representative Congress, with important enumerated powers of legislation, and other implied powers, the scope of which are subject to judicial interpretation. It also provides for a President, with specified powers, which give him a large degree of supervision over the administrative agencies; and further authorizes a system of judicial courts with important powers of judicial administration, and these courts have established their authority to determine the limits of congressional and presidential authority in cases of conflict.

American state constitutions from the beginning have provided for a division of governmental powers. The early constitutions made the state legislature the more important agency; but more and more limitations have been placed on this body, by provisions for specific administrative and local officials and judicial courts, so that the administrative system is to a considerable extent established by the constitution.

FORMS OF LEGISLATIVE ACTION

The scope of legislative authority over the administration may be analyzed into the following elements: (1) determination of activities to be undertaken; (2) organization of agencies to perform such activities; (3) provision of funds available for such agencies; and (4) determination of the means and methods for supervising and controlling these agencies.[2] We may consider these elements in the light of actual conditions.

Determination of Activities. In modern governments, the legislative body generally determines the main lines of public services and activities to be carried on by the administration, and there is general recognition that this is properly a function of that branch of the government. At the same time, there are in many cases limitations on this power, and there are wide variations in the degree to which the power is exercised. General limitations in the bills of rights restrict the power of the legislatures. Powers vested by the constitutions in the chief executive and other constitutional offices and judicial courts are beyond the control of the legislatures. In state constitutions, there are often mandatory provisions requiring the legislature to act, though no effective means of enforcing such provisions have been discovered.

In exercising this power, the distinction should be recognized between legislation requiring certain activities to be undertaken, and that authorizing but not requiring such activities. Until recently, most legislation on public activities has been mandatory in character, though often leaving more or less discretion in matters of detail. But in recent years there has been a notable development of permissive legislation leaving it to the chief executive or other agencies to decide whether to exercise the authority conferred.

In the United States, legislation, both national and state, on public services has been much more specific than in most other governments. The powers and duties of particular officials and agencies have been prescribed in minute detail, and the same policy has been followed in respect to projects for public buildings and public works. In recent years, there has been some change in this matter, and a tendency towards the authorization of general plans and policies; but American legislation, in this respect, is still often more specific than is necessary or advisable.

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[2] Cf. W. F. Willoughby, ***Principles of Public Administration*** (1926), Chap. 2; ***Principles of Legislative Organization and Administration*** (1934), Chap. 11; J. A. Fairlie "Congress and the National Administration," 26 ***Michigan Law Review***, 237 (1928).

Much the greater part of the time and the output of Congress and of American state legislatures are directed to matters of administration, and only a minor part to laws affecting private rights. An analysis of the laws passed at two sessions of the Illinois general assembly showed that about twenty per cent were appropriations, about forty per cent were laws relating to the state administration, about thirty-five per cent were laws relating to local administration, and less than five per cent were laws relating to private rights.[3]

Organization of Administrative Agencies. The organization of specific agencies of public administration may be determined by the constitution, by the legislative body, or by the higher administrative authorities, or may in practice be determined partly by each of these methods.

In a number of national governments and in most of the American states, constitutional provisions create some of the administrative agencies. American state constitutions usually provide, not only for the governor, but for other elective state officers (such as secretary of state, treasurer, attorney-general, and auditor), for a system of judicial courts, and for various county officers. State laws on local government and city charters also provide for a considerable number of specialized administrative agencies, and often organize the administrative system in still more detail. Constitutional provisions of this sort hamper the development and modification of the administrative organization to meet new conditions, and such provisions should be kept to a minimum.

On the other hand, in most European and other foreign governments, the organization of administrative agencies remains largely, if not wholly, in the hands of the higher executive authorities. Thus in France, the administrative system as a whole is established and modified from time to time by executive regulations.

In Great Britain, the situation is more complicated. The king, whose position is older than Parliament, retains large formal powers, now exercised in fact by the ministers; and the older offices were established by the Crown, though their powers have been in many cases altered by acts of Parliament. During the last century, new ministers and other agencies have been established by Parliament. But the internal organization of the various ministries and other agencies is regulated in the main by executive and administrative action.

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[3] W. F. Dodd, *State Government* (2nd ed., 1928), p. 175.

The Constitution of the United States gives the President important powers over the administration. References to departments and offices established by law, and the definite provision empowering Congress to establish judicial courts, have been accepted as authorizing Congress to organize administrative agencies. The elaborate structure of executive departments, bureaus, judicial courts, and other agencies has been established for the most part by acts of Congress, in much detail, though with some significant variations.

All of the major executive departments, numerous boards and commissions and other officials, and the several classes of United States courts have been organized by acts of Congress. In most of the departments, bureaus, and sometimes other subordinate divisions and offices, are also regulated by statute. This was done for the Department of the Treasury from the beginning, and the same method was later extended to the Department of War, and to the subsequently created Departments of the Navy, Interior, Commerce, and Labor. In many cases, too, Congress has definitely provided for local offices, such as army posts, navy yards, and for a time the customs collection districts. To a large extent, however, the internal organization of executive departments has been based on plans proposed by the departments.

On the other hand, the internal organization of the Departments of State, Justice, the Post-Office, and Agriculture has been left largely to departmental action. But the departmental organization has been recognized by Congress in appropriation bills; and in some cases there has been congressional legislation, as for some bureaus in the Department of Agriculture and in the reorganization of the foreign service.

In the present century, there has been some tendency to confer larger powers of administrative organization on the President. During the World War, powers to control food and fuel supplies, trade, and industry were vested in the President, to be exercised by such agencies as he might establish. The Overman Act of 1918 authorized the President to make temporary changes in the administrative system established by statute. There have also been other cases where temporary agents have been designated by the President without express statutory authority.

Following a long period of discussion over the need for a general reorganization of the national administrative system, Congress in 1932 authorized the President to propose specific changes, subject to congressional approval; but the changes proposed by President Hoover were disapproved by Congress. Still larger powers, however, were conferred on the President by the new Congress in 1933, authorizing changes by the President to be effective unless altered by law. A considerable number of changes have been made, but no general reorganization has yet been accomplished. The emergency legislation of 1933 to 1935 followed the precedent of the World War legislation in conferring large powers on the President, to be exercised by such agencies as he might designate or establish.

Congressional organization of the internal machinery of national administration has been exercised in too much detail; and the recent tendency towards delegating this power to the executive or administrative agencies is to be commended.

In the several states, the legislatures have also exercised freely the power to establish administrative agencies, in addition to those provided for in the state constitutions; and with the expansion of public services, much the greater part of state administrative organization is regulated by statute. Until the nineteenth century, this expansion took place in a haphazard manner, with little attempt at any coördinated system. But, beginning with Illinois in 1917, about half of the states have carried out a general reorganization of the administrative system, limited in most cases by constitutional provisions. In a few states, the new organization has been based on the amendment of the state constitution; but it may be questioned whether this method is likely to promote the flexibility needed to meet new conditions. There is more need for removing existing constitutional provisions for state and local officers, so as to open the way for a more satisfactory organization.

Closely related to the organization of administrative agencies are problems relating to the personnel of such agencies. These concern the number of persons, their classification for different kinds of positions, their qualifications, compensation, and methods of selection, promotion, dismissal, and retirement. In most governments of the world, these matters are under the control of the executive authorities, subject only to the power of the legislative bodies to prescribe the general scope of the public activities, to provide the funds for their compensation, and, in parliamentary governments, to control the selection of the higher officials.

In the United States, Congress and the state legislatures exercise larger powers over personnel, but subject to constitutional provisions and judicial decisions as to the power of appointment and removal. In regulating the details of administrative organization, American legislative bodies provide, not only for officials at the head of the major departments and non-departmental agencies, but also for subordinate officials in numerous bureaus and subdivisions, as well as for many local officials. In organizing acts or in appropriation bills, salaries of officials have been determined, and in many cases the number and compensation of employees in particular offices have been fixed. For some positions, certain qualifications have been prescribed, though these are seldom required for the higher offices. The power of appointment to higher offices is usually vested by the constitutions in the chief executive, subject to confirmation by the senates; and this has frequently resulted in giving individual members of the legislatures a voice in the selection especially of local officials in their districts.

The United States civil service law of 1883 marked the beginning of systematic legislative regulation of the subordinate personnel in the national administration. Similar laws for the state services have been enacted in ten states. New York and Ohio have constitutional provisions requiring civil service examinations for both state and local positions. State laws and local charter requirements have established such examinations in many cities and some other local governments.

By the personnel classification act of 1923, Congress provided for a comprehensive classification of employees in the national government; and classification systems have also been set up in the states, cities, and other local districts with civil service laws.

Regulation of the procedure of administrative agencies in most other governments is mainly, if not entirely, a matter for executive or administrative determination. In the United States, however, this has been largely prescribed by legislative bodies. It may be assumed that from early days, minor rules and methods of office management have been prescribed by officials of various ranks; and from the beginning of the national government under the Constitution, the heads of the executive departments have been authorized to make rules of this kind, not inconsistent with those prescribed by Congress. With the expansion of public business, there has been a continuous development of such internal regulations, though legislative provisions on such matters still continue.

Rules of procedure affecting persons outside of the public services have been more commonly established by legislative action, in both the national and state governments of the United States. The procedure for the assessment and collection of taxes, for the conduct of business in the judicial courts and before administrative agencies, and for other matters, were for a long time mainly regulated by statute; and this continues to a large extent. But in this field, also, the later tendency is to delegate authority to prescribe rules of practice and procedure to administrative agencies. This is more common in the national government, but is also developing in the state governments. But it may be noted here that an important problem in such matters is as to the procedure to be followed in making such rules; and legislative action providing for notice and consultation with those concerned and determining the agencies which shall establish such rules is desirable.

Rules and regulations affecting private rights have also been established in considerable detail in legislative statutes. In recent years, there has been some tendency to delegate this power to administrative agencies, especially in the legislation since 1933. But delegation of this kind is subject to the rulings of the courts as an unconstitutional grant of legislative power.

In Great Britain, where there has been a much greater development of administrative rules and orders than in the United States, various "safeguards" have been required—including in some classes of cases submission of such rules and orders to Parliament. In France, where there is a still greater use of administrative regulations, there are also formal requirements for consultation between the government departments, and for the submission of the more important classes of regulations to a central administrative agency, the Council of State.[4] In Germany and Italy, the practice of delegation has also been more liberal than in England.

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[4] J. A. Fairlie, *Administrative Procedure in Connection with Statutory Rules and Orders in Great Britain* (1926); C. T. Carr, *Delegated Legislation* (1921); F. N. Thorpe, *Federal Departmental Organization and Practice* (1925); Ernst Freund, *Administrative Powers over Persons and Property* (1928), Chap. 11; J. A. Fairlie, "Administrative Legislation," 18 *Mich. Law Rev.*, 181.

Financial Control. One of the most important factors defining the scope of administrative action is the control over financial resources; and power in this field forms the basis for much of the authority of representative bodies over the administration in most countries. In primitive governments, in absolute monarchies, and to some extent in modern times, the ruling authorities have relied on revenue from property and more or less fixed dues, and could control the purposes for which such revenues might be used. But the expansion of modern public administration has been closely related to the development of representative bodies which exercise the power to impose new and increasing taxes, and to control the purposes for which public funds may be used.

This system was first established in England, when the representation of the commons was begun primarily to authorize new taxes; and the control of the House of Commons over the administration has been an outgrowth of this power of the purse. It should be noted, however, that proposals for changes in taxation and for appropriations in Great Britain are presented by the administration; and since the establishment of parliamentary control over the ministry, such proposals are usually accepted and voted by Parliament. In other present-day governments under the parliamentary system, the same situation exists to a large extent. But in some countries (notably France) Parliament has exercised a larger control over the proposals of the administration; and in some countries (notably Germany before 1919), the administrative government could continue existing financial arrangements without parliamentary approval.

In the United States, Congress and the state legislatures have the sole authority to pass revenue laws and make appropriations of public revenue. Bills for revenue must originate in the more numerous houses of representatives, and the same practice is followed for appropriation bills. But both revenue and appropriation bills are freely amended in the senates.

The degree of legislative control varies in practice as between revenue and appropriation measures, and in different countries. In most governments, some at least of the revenue laws continue in force until altered by a later act of the legislative body; and this method is regularly followed by the United States Congress. This practice weakens the power of a subsequent Congress, as a majority of one house or a presidential veto may prevent either an increase or decrease of revenue. In Great Britain and some other countries, and in most of the American states, a large part of the government revenue comes from taxes imposed for one or two years, which must be renewed to continue in force.

Congress, to a large extent, exercises the power to determine what changes will be made in the revenue laws. Recommendations may be made by the President and the Secretary of the Treasury, and under favorable conditions these may be followed in the main, though subject to changes in detail. More often, serious changes will be made by Congress from the executive proposals. The details of tariff laws have regularly been determined by congressional committees, though these are now subject to some modification by the President. State legislatures also exercise a good deal of control over changes in the tax laws, though in some cases they may yield to executive pressure.

The scope of congressional power over taxation covers all forms of taxation, but until 1913 was seriously restricted by the constitutional provision that direct taxes must be apportioned to the states on the basis of population. The income tax amendment of 1913 removed this restriction as to income taxes, and has added enormously to the taxing ability of the national government. Many state constitutions impose a rule of uniform property taxation, and in some states there are other restrictions on state and local taxation and debt which seriously limit the financial power of the state legislatures and local authorities.

More direct and recurrent control is exercised by means of appropriations, which are made for particular services, and to a large extent for one year at a time (in most American states, for two-year periods), so that legislative action is necessary to continue existing operations. For some purposes, however, continuing appropriations are made, which remain in force unless altered by later legislative action. In the United States national government, payments for interest and principal on the national debt, and for important public buildings and public works, are provided for by continuing appropriations. The salaries of the President and United States judges are protected by constitutional provisions that they may not be reduced for the term for which these officers are chosen. In decisions of the Supreme Court,[5] it has been held that naming a fixed salary for an officer has much the same effect as a permanent appropriation; but in this case suit would have to be brought in the Court of Claims, and in case of judgment, payment can be made only from appropriations for the payment of such claims.

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[5] U. S. v. Langston, 113 U. S. 389.

In the American states, appropriations for operating services are generally made for one- or two-year periods; and continuing appropriations are for the most part limited to important public works, for which long-term bonds are issued, approved by popular vote. In Wisconsin, however, considerable use is made of continuing appropriations for established institutions and services.

Control over appropriations may be used to require administrative agencies to perform certain services, or to limit or even to suspend their activities. The United States House of Representatives may prevent the execution of a treaty approved by the Senate by failing to make an appropriation. The first civil service commission, appointed by President Grant, was discontinued for lack of appropriations. Specific limitations have been placed on the use of appropriations for the army. At times, non-financial provisions have been added as "riders" to appropriations. Most of this has been as a matter of convenience in changing minor details of legislation; but it has been used by one house of Congress as a means of securing consideration of a matter which the other house might otherwise ignore, or which the President might veto if submitted separately. In 1878, President Hayes vetoed an appropriation bill including a "rider" to which he objected, and thus placed the responsibility on Congress, which repassed the appropriation without the rider. Similar action was taken by President Wilson, with the same result, though later the legislation was renewed in a separate measure and repassed over the President's objections. In many state constitutions, it is provided that appropriation bills shall not include other legislation, and this method of legislative control is prevented.

Control over appropriations has been considered the most important basis of the control of the British House of Commons and other parliaments over the personnel of the ministries. But in the United States neither Congress nor the state legislature has attempted to control the selection of administrative officials by withholding supplies.

The methods of dealing with appropriations and the degree of detailed control exercised by legislative bodies varies in different countries. In all countries, appropriations for established services, and to a large extent for new undertakings, are based largely on estimates and requests from the administrative agencies. In France and England, by the beginning of the eighteenth century there had developed central finance departments which formulated general plans or budgets of proposed expenditures. The House of Commons, in the time of Queen Anne, adopted a standing rule that no member may move to increase an appropriation requested by the Crown. Under this system, while the House of Commons gives a good deal of time at each session to the consideration of the estimates in committee on supply, this time is used mainly for general criticism of the administration; and changes in the Treasury estimates are seldom made. Occasionally a motion for a minor reduction will be presented (sometimes because a larger appropriation for some purposes is wanted), but as the adoption of such a motion may lead to a change of ministry, it usually fails. During the present century, there has been some criticism of the lack of parliamentary control over expenditures. A select committee on national expenditures, in 1919, recommended the creation of standing committees on estimates to examine parts of the budget proposals each year, and to make reports to the House of Commons, but to refrain from dealing with policy or from proposing additional expenditures. Such a committee has been set up, but has led to no important changes. In France, the parliamentary budget commissions exert more influence on the budget proposals of the ministry.

In the United States, the methods and scope of legislative action on appropriations have varied, and have been changed in important respects since 1900, with the development of modern budget systems. In the national government, from the beginning, requests from different administrative agencies were compiled by the Treasury Department and submitted to Congress without revision. These were considered by the Ways and Means Committee, established in 1795, and after 1865 by the Committee on Appropriations. In 1882, several important appropriation bills were referred to other committees; and the responsibility for appropriations was dispersed. A similar development took place in the Senate. Under these conditions, changes from departmental estimates became frequent and extensive, by both additions and reductions.

In the state and local governments, there was likewise for a long time no systematic planning of expenditures. State legislatures, city councils, and other local authorities generally relied to a large extent on a single committee on appropriations for each house. But the pressure from the increasing number of agencies, as well as from individual members of the legislative bodies, combined with lack of time and the absence of any definite method of dealing with the problem, resulted in lack of effective control.

Steps towards better methods began in the larger cities, where the pressure for increased funds was strongest, and the limitations on the available resources were most restricted. The formation of a board of estimate and apportionment for New York City in 1873 marked the first stage, by providing an agency for a more systematic scrutiny of proposed expenditures. Similar agencies were established in some other cities, while in still others the auditor or comptroller exercised some supervision over the estimates. The power of the mayor to veto items of appropriations also tended to concentrate responsibility. Soon after 1900, more active discussion of the need for better budget methods led to more effective arrangements, definitely established in the Dayton city manager charter of 1914, and since then applied in many other cities.

The executive veto of appropriation items was first established by the Constitution of the Confederate States. After the Civil War, a similar power was granted to the governor in a few states; and this power has been gradually extended—to 28 states by 1900 and to 39 states by 1930. Improved budget methods were adopted in the states of California and Wisconsin in 1911, and since then have been established in most of the states. In three-fourths of the states, the formulation of the budget for the bulk of state expenditures is now in the hands of an agency under the control of the governor; and legislative changes in the budget are largely reduced. Beginning with Maryland in 1916, seven states have adopted constitutional amendments for this purpose; and in Maryland the power of the legislature to vote larger appropriations than the governor recommends has been restricted.

In the national government, the need for improved budget methods had been advocated for many years, and had been definitely recommended by an economy and efficiency commission and by President Taft in 1912. But it was not until after the enormous increase of expenditures due to the World War that definite action was taken by the passage of the Budget and Accounting Act of 1921.

Under this act, the duty of preparing a comprehensive budget of proposed expenditures is placed in a bureau of the budget, nominally attached to the Treasury Department, but acting directly under the President. At the same time, important changes were made in the committee system in Congress. The House committee on appropriations was enlarged to 35 members, and was given charge of all appropriation bills, considering different bills through sub-committees; and in the Senate all appropriation bills now go to a single committee. Changes in the classification of appropriation items and a reduction in the number of appropriation bills have made possible a more effective control. The budget law, however, did not attempt any formal restriction on the power of Congress to alter the amounts of proposed expenditures.

The new budget systems resulted in a large reduction in the amount of legislative changes in proposed appropriations, and in a more careful and effective use of the legislature's power. An extreme illustration of former practices may be seen in the appropriations by Congress for the last fiscal year before the Budget and Accounting Act went into effect. For that year (ending June 30, 1922), total appropriations were twenty-five per cent less than the total estimates; but at the same time appropriations for some items were made to an aggregate of $117,000,000 more than the estimates. Under the new system, a considerable number of minor changes continued to be made. For the first year (1923), the net result was a reduction of about four per cent from the budget estimates; after that the net results were reductions ranging from about one-half of one per cent to one-tenth of one per cent for the fiscal year 1930. This reduction in legislative activity has been due to the more thorough scrutiny of the estimates by the budget bureau. At the same time, Congress has at times voted for expenditures not requested by the President—as for river and harbor improvements and the soldiers' bonus, and has limited salary reductions proposed by President Roosevelt. For several years under the new systems, budget estimates and appropriations were lessened from year to year; but after 1926 the totals began to increase, and since 1932 have increased rapidly, as during the World War, producing large and accumulating deficits.

In the states and cities, the improved budget methods have shown similar results. With more systematic budget plans, the extent of legislative activity in altering proposed expenditures has been reduced. But other factors led to large increases in total expenditures until the effects of the economic depression affected the available revenues. The former methods showed the inability of a large legislative body to exercise effective control over the details of appropriations. The new arrangements have established a more orderly system, with a decline in the degree of legislative action.

Further control over and scrutiny of expenditures after appropriations have been made is exercised by different methods. In Great Britain, the primary control is vested in the Treasury, subject to review by the Comptroller and Auditor-General, an official with independent tenure, and to subsequent examination by the Committee on Public Accounts of the House of Commons, which recommends changes and reports to the House. In France and other European countries, there are semi-judicial courts of accounts which conduct post audits of public accounts.

In the United States, for the most part, there has been a failure to distinguish clearly between the primary control over disbursements and accounts and the subsequent audit and examination of accounts. In the national government, the main control before 1921 was vested in the Comptroller of the Treasury and a number of auditors in the Treasury Department, appointed by the President and Senate, but in practice independent. Congressional committees were also appointed from time to time to examine and report on accounts and expenditures; and beginning in 1816 a series of standing committees on expenditures were established. These committees, however, were seldom active, though at times special investigations were made, usually after a change in party control of the government, with the hope of finding irregularities in the former administration.

Under the Budget and Accounting Act of 1921, the functions of the Comptroller of the Treasury and the auditors, with added powers, were transferred to a new General Accounting Office, independent of the Treasury, headed by a Comptroller-General, appointed by the President and Senate for a term of fifteen years and removable only by joint resolution of both houses of Congress. This arrangement was intended to make the Comptroller-General and the General Accounting Office the agent of Congress in controlling expenditures. The new system seems to have resulted in a closer scrutiny of expenditures in detail; but it has further combined the functions of accounting and auditing in the same office; and as the committees on expenditure continue for the most part to be inactive, there is no regular and systematic scrutiny of accounts and expenditures by an outside agency.[6]

In the states and many cities, accounting and auditing functions have been combined under a single auditor or comptroller, usually elected by popular vote. Legally independent, this official has often been elected at the same time as the governor or mayor and other administrative officers; and under the party system he has generally been of the same party. Moreover, the auditors' functions have been limited to keeping expenditures within the appropriations, without authority to control the rate or the objects of expenditures. In a few states, the auditor is elected by the general assembly, and is thus more directly its agent. In some cities, as Chicago and Detroit, the comptroller is appointed by the mayor.

Recent reorganizations of state and municipal government have generally provided a finance department under the chief executive to control current expenditures; and in many city-manager governments provision is made also for regular external audits under the direction of the council. But in most state and city governments there is no established agency for the systematic scrutiny of financial transactions.

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[6] See George C. S. Benson, *Financial Control and Integration* (1934).

(*To be concluded in the next issue*)

FEDERAL ADMINISTRATIVE REGIONS*

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The central problem of the administrative structure of government is that of defining administrative jurisdictions.[1] It is only by carefully describing the spheres of activity of organization units and of their employees that responsibility for administrative errors can readily be located. If duties are clearly defined, and if the relations of particular units to other agencies are generally understood, offending units, together with their responsible personnel, may be called to task for failure to perform their assigned duties or for trespass on the spheres of others. The patency of these facts has led American students of federal administration to devote considerable attention to *functional* jurisdictions. During the past generation there have been a multitude of proposals for the reallocation of functions among the bureaus, departments, and independent establishments of the federal government. Intent upon these functional concerns, American students have denied or ignored the importance of the *territorial* definition of jurisdictions.[2]

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* Part of the research, the conclusions of which are here reported, was undertaken while the writer was connected with the Committee on Regional Study of the National Resources Board, and its successor, the National Resources Committee. The illustrative figures used were drafted in the offices of the National Resources Committee, but are based on the writer's data.

[1] Hierarchy, often denominated as a division in the study of administrative structure coördinate with defined jurisdictions, should be regarded as but a particular aspect of the latter. Hierarchy is but the telescoping of lesser administrative units in greater units.

[2] The only American monographs in the field of federal administrative areas are unpublished, and deal with particular federal establishments rather than with the subject as a whole. Such are: Carroll K. Shaw; *Administrative Control of Field Services in the United States Treasury Department*, typewritten doctoral dissertation, Urbana (University of Illinois), 1933; Ernest B. Price, *Study of Regional Areas in Federal Administration: Exploratory Study of the Farm Credit Administration*, typewritten, Washington (The Brookings Institution), 1934; James W. Fesler, *Federal Administrative Regions, with Special Reference to War Department Procurement Planning Activities*, typewritten doctoral dissertation, Cambridge (Harvard University), 1935.

In contrast to the American neglect of territorial jurisdictions, French administrative areas are dealt with in Antoine Doutre, *Les circonscriptions administratives spéciales* (Bordeaux, 1927). Those of Hungary are described and criticized in Gyula Hantos, *Administrative Boundaries and the Rationalisation of the Public Administration* (Budapest, 1932). The Committee on Public Administration of the Social Science Research Council has recently published Wilhelm Cohnstaedt's *Administrative Districting in Germany since 1918* (Chicago, 1935).

From the standpoint of the accepted criteria of the public administrator—efficiency and economy—the correct definition of territorial jurisdictions has high significance. While in a diminutive city-state adherence to a purely functional division of authority might well be desirable, areal spheres are indispensable in a country the size of the United States. A man cannot be sent outside the District of Columbia, be told that his function is to inspect grain elevators in the United States, and still be expected to perform his function intelligently. The fact that usually twenty or fifty men may be thus directed as to their duties does not clarify the situation; it hopelessly muddles it. A great number of federal administrative agencies have, therefore, found it necessary to set up field offices with definitely demarcated areas of jurisdiction—or "regions."

The significance of federal administrative regions for the political scientist transcends mere considerations of efficiency and economy in public administration. The whole issue of regionalism is being increasingly posed by geographers, sociologists, and progressive students of polity. Regional geographers have demonstrated that state boundaries have slight relation to natural, physical areas, and they have emphasized that social problems (with which government has increasingly to deal) are shaped largely by the physical environment. Sociologists have reached somewhat similar conclusions, although using a different approach. They have analyzed social statistics (literacy, birth-rates, crime, proportion of urban to rural population, etc.), on the basis of which they have delineated social regions of the United States.[3] Students of politics have analyzed presidential elections and votes in Congress to prove that there are political regions.[4]

The proposal of regional government is a rather radical adaptation to government of the discovery that states do not represent geographical, social, or (in a special sense) political unities. Several years ago, William B. Munro suggested the desirability of regional government, and he has recently reiterated his views.[5] In his *The Need for Constitutional Reform,* William Y. Elliott proposes that twelve regions, or "commonwealths," be established by a new constitutional convention, and that representation in the Senate thenceforth be from these units, not from states.[6] Newspapers and periodicals have occasionally essayed to popularize the proposal to substitute regions for the states.[7]

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[3] *E.g.*, the forthcoming *Southern Regions*, to be published under the auspices of the Southern Regional Committee of the Social Science Research Council. The magazine *Social Forces*, published at the University of North Carolina, frequently carries articles illustrative of the sociological approach to regionalism. See particularly the issues for December, 1929, and March and October, 1934.

[4] Preëminently, Frederick Jackson Turner, *The Significance of Sections in American History* (New York, 1932), and Arthur N. Holcombe, *The Political Parties of Today* (New York, 1924).

The states themselves have become increasingly cognizant of their impotence in dealing with problems which cover several states. Unwilling to further the aggrandizement of power by the federal government, many states have organized regionally for the consideration of regional problems. Interstate compacts represent the most formalized method of regional coöperation. The Colorado River Compact, the Northeastern Labor Compact, and the compact establishing the Port of New York Authority are the most significant cases in which this device has been used. Organized interstate coöperation on a regional basis has been most fully developed by the New England Council. Although the Council has a strong overtone of chamber of commerce activity, the governmental coöperation side is not neglected. The extension of the governmental aspect of the New England Council to the whole country appears to be an object of the Council of State Governments. It would establish about ten regions, each with a permanent secretariat for the encouragement of regional interstate coöperation. A third device for the promotion of regional activity is that of regional associations of state administrative officials and regional sections of national associations of such officials.[8]

Both the discovery of the regional nature of many governmental problems and the proposals and efforts to organize government so as to deal with these problems lend interest to a study of federal administrative regions. The areas adopted by federal agencies for administration constitute an interesting compromise between natural, functional regions and the peculiar necessities of administration. The principles which should govern this compromise are, however, beyond the scope of the present paper. Here it is proposed simply to indicate the agencies which regionalize, and to present a factual comparison of their regional schemes.

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[5] "Our Strengthening Sectionalism," in *The Invisible Government* (New York, 1928), pp. 136–164, and "The New Deal and a New Constitution," *Atlantic Monthly,* Vol. 156, pp. 617–624 (November, 1935).

[6] Pp. 191 ff.

[7] *Chicago Tribune,* December 8, 15, 22, 1929; *New York Times Magazine,* April 21, 1935, p. 5; *Saturday Evening Post,* December 8, 1934, editorial page.

[8] For a list of regional and national associations of state administrative officials, see Public Administration Clearing House, *Directory of Organizations in the Field of Public Administration* (Chicago, 1934). A description of the activities, as well as a list, of such associations is available in W. Brooke Graves, *Uniform State Action* (Chapel Hill, 1934).

A survey covering the period November, 1934, to February, 1935, revealed that 72 federal agencies of bureau status or higher have territorially defined the jurisdictions of their field agents. Inasmuch as some agencies perform several functions, for each of which they divide the country differently, there are, in all, 106 regional schemes in use for federal administration.[9]

TREASURY DEPARTMENT

- Bureau of Customs
    - Customs Districts
    - Agency Districts
    - Comptrollers Districts
- Bureau of Internal Revenue
    - Collection Districts
    - Special Agents Divisions
    - Supervisors of Accounts and Collections: Divisions
    - Alcohol Tax Unit: Districts
    - Income Tax Unit: Field Divisions
- Bureau of the Mint: Districts
- Bureau of Narcotics: Districts
- Division of Procurement
    - Public Works Branch: Districts
- Secret Service Division: Districts
- U. S. Coast Guard
    - Areas, Divisions, and Districts
    - Recruiting Stations

WAR DEPARTMENT

- Corps Areas
- Procurement Zones
- Air Corps: Procurement Districts
- Chemical Warfare Service: Procurement Districts

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[9] Maps showing all of these regional schemes appear in National Resources Committee, *Regional Factors in National Planning and Development* (Washington, 1935), pp. 206–223.

The list of regionalizing agencies and their schemes here presented differs considerably from the list of federal administrative "zones" or "regions" which appeared in Dr. W. Brooke Graves' article, "The Future of the States," in the preceding issue of this REVIEW, pp. 35–38. These differences are to be explained in part by the different periods of the two surveys, by expectable differences of opinion as to the definition of "region," and, above all, by the inherent difficulties of a survey of all the federal agencies' field services during a time of emergency government. As each list contains regional schemes omitted from the other, it is suggested that the two lists should be used together.

- Corps of Engineers
  - Power Zones and Districts
  - Procurement Districts
  - River and Harbor Divisions
- Medical Department: Procurement Districts
- Ordnance Department: Procurement Districts
- Quartermaster Corps: Procurement Districts
- Signal Corps: Procurement Districts

DEPARTMENT OF JUSTICE

- United States Attorneys (and District Courts)
- Bureau of Prisons: Federal Penitentiaries
- Division of Investigation: Field Office Districts

POST-OFFICE DEPARTMENT

- Central Accounting Post-Offices
- Inspection Districts
- Supply Offices
- Railway Mail Service: Divisions

NAVY DEPARTMENT

- Naval Districts
- Naval Material Inspection Districts
- Recruiting Divisions and Districts
- Marine Corps: Recruiting Divisions
- Supply Corps: General Inspectors

INTERIOR DEPARTMENT

- Bureau of Mines
  - Safety Districts
  - Economics Branch: Field Offices
- Bureau of Reclamation: Field Attorneys' Offices
- Division of Investigation
  - Field Divisions
  - Petroleum Code Investigation Districts
  - Public Works Administration Investigation Districts
- General Land Office
  - Cadastral Engineering Districts
  - District Land Office
- National Park Service
  - State Park Division: Regions
- Office of Education: National Vocational Education Regions
- U. S. Geological Survey
  - Conservation Branch
    - Oil and Gas Leasing Division: Districts and Subdistricts
  - Topographic Branch: Divisions
  - Water Resources Branch
    - Districts
    - Areas for Reporting on Surface Water Supply

DEPARTMENT OF AGRICULTURE

- Agricultural Adjustment Administration
  - Commodities Purchase Section: Agricultural Drought Relief,

- Cotton Production Section
- Program Planning Division
  - Land Policy Section: Regions
- Bureau of Agricultural Economics
  - Federal Grain Supervision: Districts
  - Hay, Feed, and Seed Section
    - Seed Reporting Service: Divisions
    - Seed Verification Districts
- Bureau of Agricultural Engineering: Irrigation and Drainage Investigations
- Bureau of Animal Industry
  - Field Inspection Divisions
  - Meat Inspection Laboratories
  - Division of Tick Eradication and Special Diseases
    - Hog Cholera Control Field Station Areas
    - Tick Eradication Field Station Areas
  - Tuberculosis Eradication Division: Field Stations
- Bureau of Biological Survey: Game Management Regions
- Bureau of Chemistry and Soils: Soil Survey Districts
- Bureau of Public Roads: Districts
- Extension Service: Sections
- Food and Drug Administration: Districts and Stations
- Forest Service: Regions
- Weather Bureau
  - Forecast Districts
  - Offshore Marine Forecast Zones

DEPARTMENT OF COMMERCE

- Bureau of Air Commerce
  - Inspection Districts
  - Maintenance Districts
- Bureau of the Census: Geographic Divisions
- Bureau of Foreign and Domestic Commerce: District Office Territories
- Bureau of Navigation and Steamboat Inspection: Supervising and Local Inspection Districts
- Lighthouse Service: Districts
- U. S. Shipping Board Merchant Fleet Corporation: Districts

DEPARTMENT OF LABOR

- Immigration and Naturalization Service: Districts

INDEPENDENT ESTABLISHMENTS

- Civil Service Commission: Districts
- Farm Credit Administration
  - Districts
  - Emergency Crop and Seed Loan Offices
- Federal Communications Commission: Inspection Districts
- Federal Coördinator of Transportation: Regions
- Federal Emergency Relief Administration: Regions
- Federal Home Loan Bank Board: Regions
- Federal Housing Administration: Regions, States, and Districts
- Federal Power Commission
  - National Power Survey: Zones

Federal Reserve Board: Districts
Home Owners' Loan Corporation: Regions
Interstate Commerce Commission
  Geographical Grouping of Railways
  Origin and Destination Traffic Regions
  Bureau of Accounts: Branch Office Territories
  Bureau of Locomotive Inspection: Inspection Districts
  Bureau of Safety: Safety Appliance Groups
National Labor Relations Board: Regions
National Recovery Administration
  Compliance Division: Regions and Field Offices
Public Works Administration
  State Engineer Inspectors' Districts
  Finance Division: Sections
  Office of Chief Accountant: District Audit Areas
Reconstruction Finance Corporation: Loan Agencies
Securities and Exchange Commission: Regional Supervisors Zones
U. S. Employees Compensation Commission: Compensation Districts
Veterans Administration
  Diagnostic Centers
  Regional Offices
  Supply Depots

The areas chosen were in almost every case larger than states, and were usually formed by the grouping of several states. Over three-fourths of the regional schemes use less than 17 regions. In other words, the 48 states have been found both too small and too numerous for use as paramount areas of federal administration. The number of regions in use by federal administrative agencies is shown in Figure I.[10] The location of each bar on the horizontal scale indicates the number of regions in use, while the height of the bar indicates the number of schemes which use the designated number of regions. Examination of the chart will show that there is no agreement on the exact number of regions which is most desirable. There is no single number of regions which stands out in any remarkable fashion. While 12 regions are chosen by each of nine schemes, four regions and nine regions are selected almost as frequently.

Not only does the number of regions vary considerably, but there is slight correspondence of regional boundaries among the several schemes. With very few exceptions, each federal agency has chosen its regional boundaries with little knowledge of or concern for the boundaries already chosen by other agencies. Even such a traditional unit as New England is occasionally dismembered—particularly through depriving it of Connecticut, or at least of Fairfield county, Connecticut. Such an every-day concept as the Pacific Northwest is given varying content. Should Idaho be added to Washington and Oregon? If so, should not Montana also be added? The answers to these questions vary according to the administrative necessities, the prejudices, or the whims of individual bureaus.

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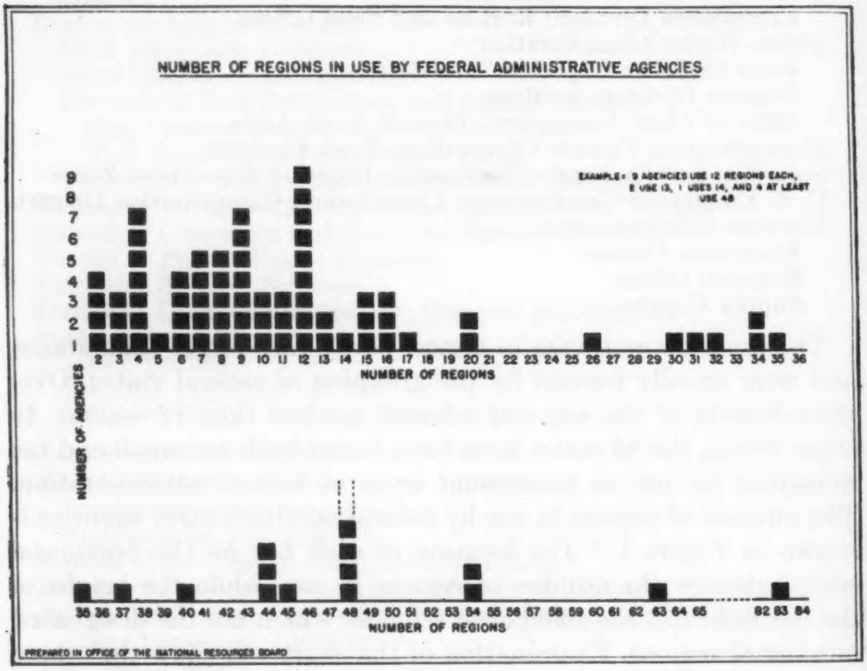
[10] Figure 1 presents data for only 85 regional schemes. All schemes which covered only particular parts of the United States were excluded, as they would destroy the usefulness of the chart for comparative purposes. As indicated on the chart, no attempt has been made to indicate the number of agencies using the 48 states as administrative areas. The point to be emphasized is that although nearly all agencies with field services must formally or informally use states as administrative areas, the administrative areas *next below the nation* are generally larger than single states.



PREPARED IN OFFICE OF THE NATIONAL RESOURCES BOARD

FIGURE I

Regional boundaries of the schemes nevertheless show a general respect for state boundaries. Most administrative regions are formed by grouping whole states, rather than by selecting river basins or other natural regions without regard to state boundaries. There is agreement also as to which states should be divided when state boundaries are abandoned. Of the 106 regional schemes, 35 divide the state of Pennsylvania—most of them along the Allegheny watershed separating the areas tributary to Philadelphia and Pittsburgh. Illinois and Indiana are each divided by 27 schemes, and almost always by an east-west line. New York and Ohio are each divided by 25 schemes, while California, New Jersey, Texas, and Michigan follow in frequency of division.

Although regional boundaries differ greatly, there is a significant agreement on the choice of headquarters for the regions. Seven of the regionalizing agencies (such as the Bureau of the Census and the Office of Education) do not have field offices for their regions. Also eliminated from consideration in this regard should be the few regional schemes, particularly characteristic of the Interior Department, which cover only a portion of the United States. With these two classes eliminated, there are 85 regional schemes covering the whole country, and they have a total of 1,300 regional offices distributed among 195 cities. Figure 2 shows these cities and indicates which of them are most frequently chosen in regional schemes. The frequency of choice of certain cities is of considerable importance in view of the proposals from some quarters that all federal regions, or at least all federal regional headquarters, should be identical.[11] The cities already selected by a large number of agencies would be the logical headquarters in any uniform scheme of this nature.

On the map (Figure II) there are shown six categories of cities. Only the three categories of cities which are chosen as headquarters by over 20 agencies will be discussed here. San Francisco, New York, and Chicago stand out preëminently. San Francisco (plus Berkeley and Oakland) is chosen by 73 schemes, New York by 69, and Chicago by 66. No other city in the country is the regional headquarters for more than 48 federal agencies. These cities are not the three largest cities in the United States, nor is the frequency of their choice in the order of their population. Furthermore, within its own region San Francisco has a smaller population than Los Angeles. Three factors appear to be responsible for the frequency with which these three cities are selected: each is located in an important region of the country; each is located centrally within its region; and each is a large business center with highly developed transportation and communication facilities.

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[11] National Resources Board, *A Report on National Planning and Public Works in Relation to Natural Resources . . .* (Washington, December 1, 1934), p. 74. Natural Resources Committee, *Regional Factors in National Planning and Development* (Washington, December, 1935), esp. p. xi.

The second largest circles on the map represent the five metropolitan centers each of which has from 36 to 48 federal regional offices. Boston (48), New Orleans (38), Denver (37), Atlanta (37), and the Twin Cities (36)[12] are the five centers. The prominence of Boston as the fourth most frequently selected headquarters-city suggests the frequency with which New England, or a portion of it, is granted regional status. In addition to the eight metropolitan centers already discussed, there is a third group of cities, each of which has been chosen by between 20 and 31 federal agencies. There are 13 such cities, as follows: St. Louis (31), Seattle (31), Baltimore, (27), Kansas City (27), Portland, Oregon (27), Washington (26), Cleveland (24), Los Angeles (24), Philadelphia (24), Cincinnati (23), Detroit (23), Omaha (20), and Pittsburgh (20).

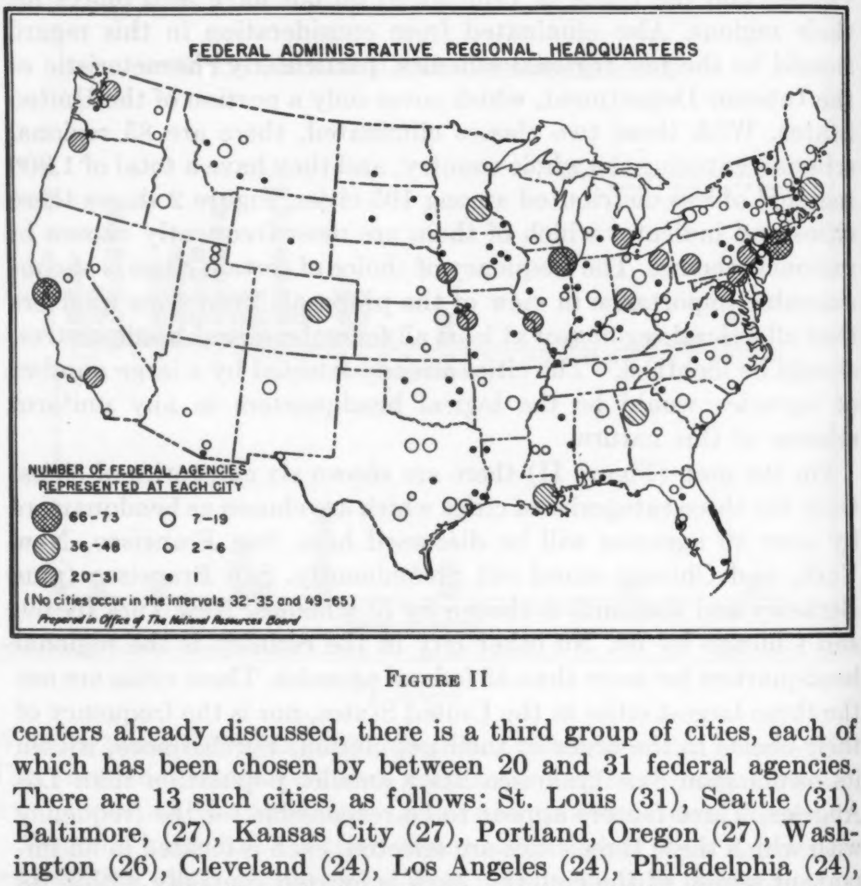
FEDERAL ADMINISTRATIVE REGIONAL HEADQUARTERS
NUMBER OF FEDERAL AGENCIES REPRESENTED AT EACH CITY
66-73
36-48
20-31
7-19
2-6
1
(No cities occur in the intervals 32-35 and 49-65)
Prepared in Office of The National Resources Board

FIGURE II

Of the 21 cities represented on the map by the three larger types of circles, 16 are located east of the hundredth meridian and 14 north of the thirty-eighth parallel. The bulk of regional headquarters, in other words, are located in the eastern and northern parts of the United States. Examination of the maps of the 85 regional schemes validates the conclusion that regional divisions are more numerous, and are smaller, in the East and North than in the West and South. Concentration of population in the Northeast is the key to explaining this common characteristic of federal administrative regional organization. While several federal agencies are less concerned with citizens than with physiographic characteristics such as water-sheds, arid land, mineral deposits, and forests, most federal bureaus are enforcing law or performing services in such a way as to find that the magnitude of their tasks is roughly proportioned to the concentration of population. The desire to equalize the burden of work among administrative regions on a population basis necessitates, therefore, a multiplicity of regions in the North and East, where the population is dense, and a smaller number of regions in the South and West, where the population is sparse.

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[12] St. Paul is chosen by 22 agencies; Minneapolis by 14.

In summary, the typical scheme of federal administrative regions would have 12 regions, would correspond with no other federal regional scheme, would form its regions through grouping states rather than by dividing them, and for headquarters-cities, would choose 12 of the following cities: San Francisco, New York, Chicago, Boston, New Orleans, Denver, Atlanta, St. Paul or Minneapolis, St. Louis, Seattle, Baltimore, Kansas City, Portland, Washington, Cleveland, Los Angeles, Philadelphia, Cincinnati, Detroit, Omaha, and Pittsburgh.

Several questions are raised by this factual survey of federal administrative regions. In the first place, does this variety of regional schemes rest upon the *bona fide* variety of functions to be performed in the field? Or was the National Resources Board correct in asserting that "many of the present confusing divisions of the country appear to have no justification beyond the traditions of the bureaus by which they are used?"[13] In the second place, what are the principles which should guide a regionalizing bureau in determining the number, boundaries, and headquarters of the regions, the extent of decentralization of authority to regional chiefs, and the intra-regional organization?[14] Thirdly, should the multiplicity of regional schemes be reduced to unity as a means of making the administrative organization more intelligible, promoting coöperation of field agents of the government, and securing the economies of central purchasing and provision of office space for all agencies within a particular region? The National Resources Board, as the planning board of the federal government, looked upon such a proposal with favor, stating: "If coördinated planning is to be successful, some degree of order must be brought out of the present chaos of regions and districts. It seems reasonable to suppose that a large number of federal agencies could use the same regional divisions without serious detriment to their work."[15]

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[13] National Resources Board, *A Report on National Planning and Public Works in Relation to Natural Resources* . . . (Washington, December 1, 1934), p. 74.

[14] The writer has attempted to outline some principles of administrative regionalization in his *Federal Administrative Regions*, planned for publication this year.

The answers to such questions will have profound effects on the work of the field service of the federal government. Students of public administration might well devote increasing attention to these and similar questions in the realm of territorial administrative jurisdictions.

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[15] National Resources Board, *loc. cit.* Cf. the more recent report of the National Resources Committee, ***Regional Factors in National Planning and Development*** (Washington, December, 1935), which states on p. xi: "We recommend pointing federal policy toward regrouping the field districts used by the numerous United States agencies . . . in the direction of achieving a limited number of regional centers, say 10 to 12. It is, of course, necessary and desirable that there be many types of districts for the many different agencies of the federal government ranging over many kinds of public services. But there are distinct advantages in economy of time and effort in directing these organizations more sharply toward some simpler framework."

AMERICAN GOVERNMENT AND POLITICS

Business Conditions in Presidential Election Years. The influence of the business cycle on politics has been studied by Rice[1] and Tibbitts.[2] But the influence of politics on the business cycle has not been systematically investigated, although Ayres[3] has shown that prosperous times are about equally divided between Republican and Democratic administrations, and Mitchell[4] has shown that the curve of business during presidential administrations is not at all like the business cycle. There is a popular impression that business is not as good during the year of a presidential election as in other years. It is the purpose of this paper to present the results of an investigation of this question.

I

As an index of business activity, the widely known index issued by the Cleveland Trust Company under the direction of Leonard Ayres was first studied and is referred to hereinafter as the Ayres index or the index of business activity. A look at this curve (not here reproduced) with reference to presidential election years reveals no relationship. Comparison can be facilitated, however, by expressing the index of business activity during an election year in terms of the business indexes of other years of a presidential period. The results will be numbers above or below 100, indicating whether business was better or worse in the pre-election and post-election years as compared with the year in which the presidential election occurred. Such comparisons are shown in Chart I for the thirty-six presidential elections. This chart shows, for instance, that in the election year 1932 business was worse than in either the preceding year or the following year. Business was twenty-five per cent better in the pre-election year and twenty per cent better in the following year. But in 1920, business was better in the election year than in either the preceding or the following year. In 1928, business was better in the election year than in the year before, but not so good as in the year following. The chart shows that there is a great deal of variation from one election period to another. One cannot say, therefore, from any one election period whether business is better or worse before or after an election.

After looking at the chart as a whole, it is clear that the patterns for election periods are very irregular. Out of the thirty-six election periods, only ten showed V-shaped patterns, that is, a condition where business in the election year is worse than in either the pre-election year or in the post-election year; while there were nine election years when the V-shaped pattern was inverted, that is, when business was better in an election year than in either the year preceding or the year following.

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[1] Stuart Rice, "Some Applications of Statistical Methods in Political Research," in this Review, May, 1926.

[2] Clark Tibbitts, "Majority Votes and the Business Cycle." *American Journal of Sociology*, Jan., 1931.

[3] Leonard Ayres, *Business Bulletin of the Cleveland Trust Co.*, Oct., 1924.

[4] Wesley C. Mitchell, "Testing Business Cycles," *Bulletin No. 31, National Bureau of Economic Research*, March 1, 1929.

Furthermore, in only nineteen of the thirty-six presidential election periods was business worse than in the preceding year, while in seventeen election periods business was better.

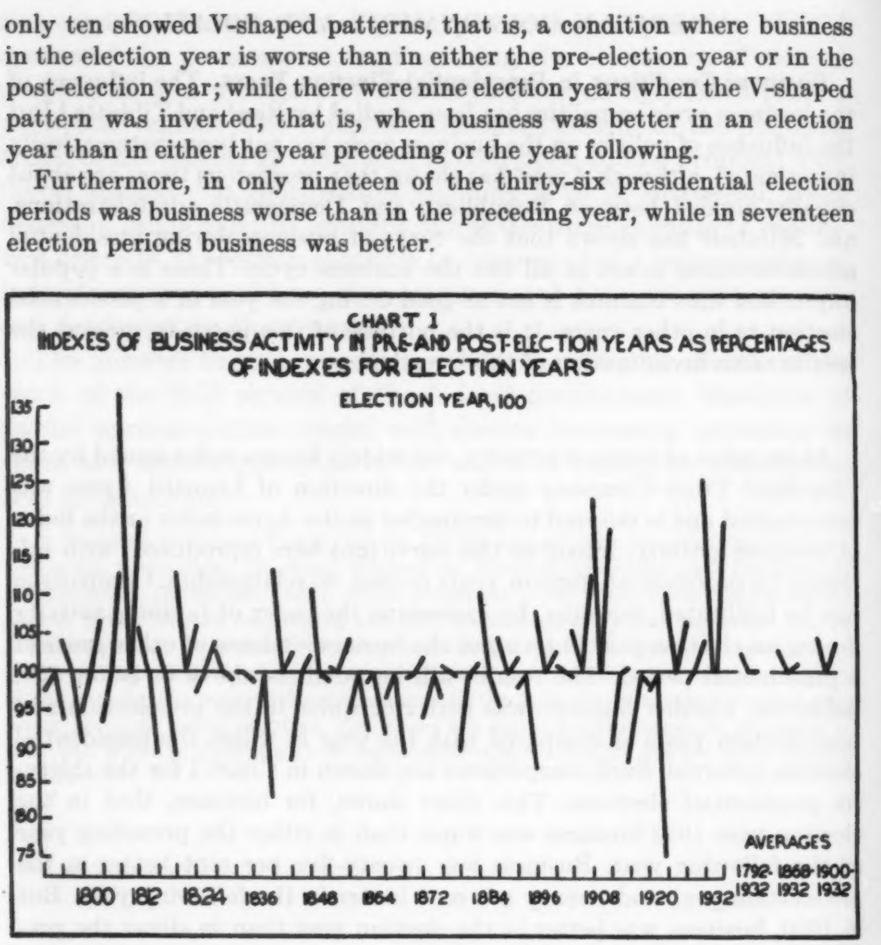
CHART I
INDEXES OF BUSINESS ACTIVITY IN PRE-AND POST-ELECTION YEARS AS PERCENTAGES OF INDEXES FOR ELECTION YEARS
ELECTION YEAR, 100

II

From this rough measure, we are not justified in saying that elections depress business. Obviously, if there is any effect, it is very slight, and a more refined measure is needed. Such a measure would be the extent of good or bad business in, say, pre-election years as compared with election years, rather than the mere enumeration of years when it was better or worse without noting how much.

The average distance of the line in each configuration in Chart I above or below the base line for the year preceding the election year would be a more refined measure, since it shows the extent of good business or bad times in the pre-election year as compared with the election year. This average for the thirty-six election periods shows business to have been 2.4 per cent better in pre-election years than in election years. Business is thus only a very little better, and this conclusion is based on only thirty-six cases. The question is, Might not this slight excess of favorable economic conditions in pre-election years be due to the small number of cases; very much as, in the tossing of a coin a few times only, when there is an excess of heads, there is no proof that heads occur more frequently than tails. Making a test, then, for the small number of election periods, it is found that the average of business conditions in pre-election years would be found to be worse in one out of ten samples of election periods of this size. From this sample of thirty-six elections, we infer that the chances are nine out of ten that, in a very large number of similar election periods, the average business conditions would be better in pre-election years.

As to the year following the election, the average business year is about the same as election years. The average is only .1 per cent better. The comparison has been up to this point only with the year preceding election and the year following. But there are four years in a presidential period. It is interesting to inquire whether business is better in every other year of the election period than in the election year. If such were true, the presumption that election politics is bad for business would be stronger.

Examining the data for the year that precedes an election by two years, the average of business conditions is 1.2 per cent better. The average yearly status of business is then a small fraction worse in an election year than in any other year of the four-year election period. But the difference is so small that it may be due to chance, except perhaps in the case of the year immediately preceding the election; and even for this year the superiority of business is very slight.

In the early years of the United States, business conditions were largely affected by weather, since agriculture was by far the predominating economic activity, as compared with the present commercial and credit structure which is affected by many other factors than the climatic. As the agitation of presidential candidates could not affect the weather, the business conditions of election years in these early days would hardly be different from other years. The country tended to become more industrialized shortly after the Civil War, but even more so after the turn of the century. When these earlier periods are excluded, the conditions of business in election years as compared with pre- and post-election years is still lower, as shown by the following figures which give the average percentages which the indexes of business in the pre- and post-election years were of the indexes of business in the election year for the whole of our national history, for the post-Civil War period, and for the twentieth century.

	Since 1791	*Since 1867*	*Since 1899*
Average percentages for pre-election years	102.4	102.7	104.6
Average percentages for post-election years	100.1	101.5	104.0

Since the beginning of this century, there have been only nine election periods, which are of course very few; but the fact that business has been about twice as bad, relative to the post- and pre-election periods, as compared with the longer periods, means that the reliability of the conclusion that business since 1899 is worse in election years on the average is about as great as for the longer period. That is, the data show that the chances are about nine in ten that if a very large number of election periods under conditions existing as in the twentieth century were studied, there would be found worse business conditions in election years. Furthermore, for the second year preceding election (not shown in the preceding table) business has been better than in the election year, both for the period since the Civil War and for the period since the beginning of the century. Business conditions were then on the average a fraction worse in election years than in any of the three other years of the four-year election period.

III

The analysis can be further refined by making the comparison by months instead of by years. Chart II shows by months for the years since the Civil War the average indexes of business as percentages of the index of October of the election year, the month at the close of which the election takes place. From this chart it is seen that business activity reaches its lowest point during the four-year presidential cycle in July preceding the election date, and not in the election month itself. This is not a seasonal influence, for the seasonal fluctuations have been removed from the index, and furthermore, no such change occurs in the other years. This monthly decline is from February of the election year, and the drop is about six per cent, as compared with a yearly decline of three per cent from pre-election to election year. The highest point of business activity prior to election is in September of the preceding year, and the difference between this high point and the low point preceding election is about eight per cent. The pick-up of business activity continues into the next year to the extent of some six or eight per cent. The probability that a very large number of election periods would show business in July of an election year worse than in these peak months is from twenty to one to fifty to one. It is thus seen that comparing degrees of business activity by months shows best the low condition of business in an election year. It must be remembered, however, that this low condition of business in an election year is brought out only by averaging all of the election periods. Any one year will not conform to the pattern.

These monthly comparisons can be shown in another manner. Each month of the average election year can be compared with the same month of the non-election years, as was done in previous paragraphs for the whole year. Thus, the average index of business activity for all the Augusts of the seventeen election years between 1868 and 1932 is less than the average index for all the Augusts of the pre-election years of this period by about five per cent and less than the Augusts of the post-election years by about 2.5 per cent. (For the period 1900–32, the per cents were 6 and 6 respectively.)

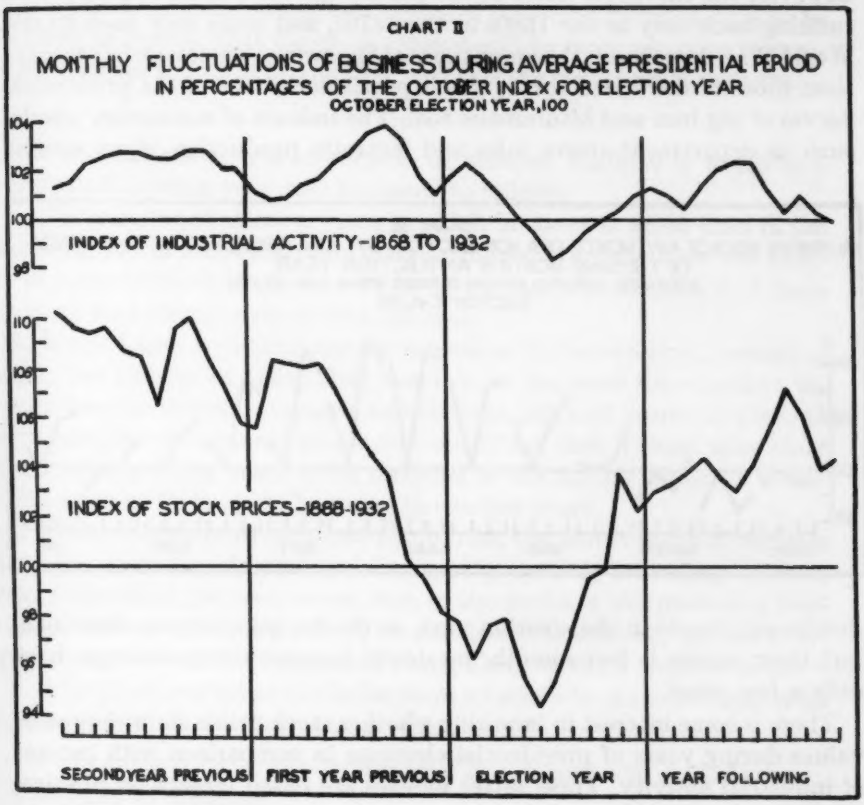
CHART II

MONTHLY FLUCTUATIONS OF BUSINESS DURING AVERAGE PRESIDENTIAL PERIOD
IN PERCENTAGES OF THE OCTOBER INDEX FOR ELECTION YEAR
OCTOBER ELECTION YEAR, 100

In Chart III are shown similar comparisons for all the months of the year. The summer months of the election year show the greatest contrast with summer months of the other years of the election period. Indeed, the pattern is not very consistent for the winter months. The effect of the election apparently makes its influence most felt in the summer months preceding the autumn election.

IV

A number of indexes of business other than Ayres were tried; but the results need not be presented here in detail since they were much the same as those found with the Ayres index. Some have the low point in

September preceding the election, others in August, and still others in July. Interest rates on sixty- to ninety-day commercial paper in New York City, however, reach a low point in December following the election. But all of the curves have a slope downward from the early part of the election year or the later part of the pre-election year. In general, however, the curves for most of the indexes are for a rather short period running back only to the 1880s or the 1870s, and some only back to the World War. In general, the amplitudes of the swings are somewhat greater than those of the Ayres curve; this is particularly true of the production curves of pig iron and bituminous coal. The indexes of consumers' goods, such as department stores sales and cigarette production, show similar downward trends in the election year, as do the other curves examined; but their course is less smooth, no doubt because these series go back only a few years.

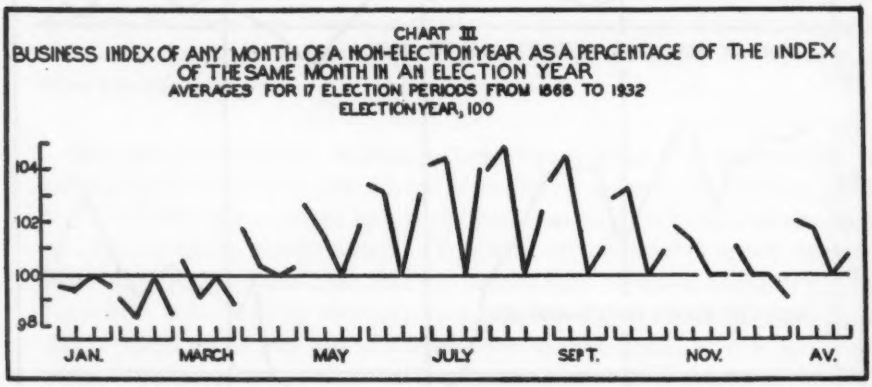
CHART III
BUSINESS INDEX OF ANY MONTH OF A NON-ELECTION YEAR AS A PERCENTAGE OF THE INDEX OF THE SAME MONTH IN AN ELECTION YEAR
AVERAGES FOR 17 ELECTION PERIODS FROM 1868 TO 1932
ELECTION YEAR, 100

There is some interest in inquiring whether stock prices show depressed values during years of presidential elections in comparison with indexes of industrial activity. These latter indexes are based largely on physical production and on volume of trade, and are perhaps less susceptible to rumors and emotions than values of stocks traded on the exchanges, which are based to some extent on estimates of unknown future conditions.

In Chart II is presented a curve of the indexes of stock prices[5] from 1888 to 1932 in percentages of the October index, and it is similar to the curve of business activity shown above it, and with which it, however, may be compared only with reservations. The major fluctuation of the curve is the deep dip in the election year, as is true also of the curve of business activity. The other fluctuations in the stock-price curve are slight as compared in size with the one major dip. In the curve of business activity, the minor fluctuations are closer in size to its major fluctuation than in the case of the stock-market curve. It would thus appear that the election year is more of a major influence on stock prices than on business activity. It is probably not proper to compare the amplitude of the swings of stock prices and of business activity. The amplitude is affected somewhat by both the number and the nature of the items included. It is to be expected, of course, that the stock market will be more sensitive to campaign speeches than will production; and this the curves seem to show.

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[5] The stock prices are the Axe-Houghton index and are based upon ten to thirty-three stocks.

V

The conclusions of this inquiry as to whether business is worse in a presidential election year may be stated as follows:

1. The number of election years in which business is worse than in the preceding and in following years is not sufficiently greater than the number of years in which business is better to warrant a conclusion that there are more lean election years than fat ones.
2. If the degree to which business is good or bad is measured, instead of merely the number of years, then business, in the years since modern industry has developed, averages two to four per cent worse in election years, and the chances are about nine out of ten that if there were more presidential election years to be included in the sample, business would on the average be found to be worse in election years.
3. When comparisons are made by months, the lowest point of business in the four-year presidential cycle is found in the July preceding election, being some eight per cent worse than in the peaks of the preceding September or of the following July. This conclusion is true only for the average, any individual election period being likely to differ quite widely.
4. The stock market seems to be more sensitive to the influences of an election year than do trade and production.

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State Constitutional Development in 1935.[1] The year 1935—being one of the alternate years during which state politicians exert their persuasive talents in the capitols and not on the hustings—witnessed 44 regular and 21 special sessions of state legislatures. And only the Virginians entirely eschewed both regular and special legislating for the twelve-month period. But despite the 7,400 zealous legislators busily law-bent, and the thousands of new statutes now ornamenting the statute-books for better or for worse, only 40 constitutional amendments successfully emerged from preliminary contests and qualified for the final test match with the electorate. Of these, 25 were victorious. Most votes on constitutional amendments are reserved for the year of regular elections.

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[1] Professor Harold F. Gosnell has kindly aided me in checking this list of amendments.

Repeal of Prohibition. In November, Kentuckians battled for Bourbon, or at least for local option, and won—by a vote of 421,690 to 315,183 (Sec. 61). The narrowness of the margin indicates the controversial color of the question, but the extraordinarily large number of balloting citizens in this particular election is probably more accurately explained by the exciting gubernatorial contest. Texas—on August 14—likewise repealed state prohibition (Art. XVI, Sec. 20), but the vote of 296,597 to 250,948 shows how divided was the general sentiment. Local option was provided, the "open saloon" banned, and a state monopoly authorized. The legislature, however, assumed that the monopoly was not compulsory and has not established one. As a result of these two decisions, there remain only five dry states, and of these, Oklahoma plans to vote on a repeal amendment in November, 1936.

Social Security. Probably lured by the federal pot of gold, three Southern states decided to construct state rainbows for their aged. Engineering details in these bridges vary widely. Kentuckians enthusiastically (639,175 to 64,209) approved old age pensions, but delegated system-making to the legislature. Texas, by a vote of 444,539 to 108,565, accepted the pension amendment, but, while empowering her house and senate to outline the provisions, considerably handicapped the process by a number of constitutional restrictions. Oklahomans more wisely specified details of the administrative structure in their amendment, but left the commission possessed of wide discretionary powers in actual administration (Art. XXIII, Secs. 12 and 13).

The Law and the Courts. In 1934, one of the most significant products of the constitutional workshops was California's department of justice. The American Bar Association, it will be remembered, not only backed the movement in that state; it issued an enthusiastic—but not sufficiently well evaluated[2]—recommendation that such departments be established in all states. Apparently the suggestion has met with but restrained approbation, for not a single such proposal was submitted to the electorates in 1935.

New York passed (1,150,687 to 480,340) an amendment (Art. I, Sec. 2) allowing five-sixths verdicts of juries in civil cases.

Texas voted (294,287 to 199,959) to permit temporary commitment without jury trial of insane persons not charged with a criminal offense (Art. I, Sec. 15). She further (245,285 to 216,549) granted the courts power to suspend sentence or to release prisoners on probation (Art. IV, Sec. 11). Thus, belatedly and by narrow margins, does Texas accord her officials those powers which have long been enjoyed by officials in a majority of the other states.

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[2] See in this connection Earl H. DeLong, "Which Man for the Job?," *State Government*, Vol. 8, No. 3.

Delaware—the only state which does not have a referendum on amendments—gave the necessary approval of the second successive legislature to an amendment (Art. IV, Sec. 28) limiting to a six-month period applications for writs of error.

Local Government. Of great experimental interest to those concerned with better local government is New York's county home-rule amendment, which passed by 1,288,297 to 499,332 (Art. III, Sec. 26). Like 24 other states, New York formerly had constitutional provisions for election of most county officers—a system which made impossible the simplification of governmental structure. Under the new amendment, the legislature is required to set up alternative forms of county government from which the citizens of a county may choose for themselves. The writer sympathizes heartily with the purpose of the amendment, but believes that applause may well be reserved until the practical functioning can be observed. Texas' experience with county home rule has not been encouraging.

Undeterred by this disappointment, the Lone Star State has now voted (274,537 to 188,642) to attempt improvement of local government by abolition of the fee system (Art. XVI, Sec. 61). In counties of more than 20,000 inhabitants, district officers and county officers are to be compensated on a salary basis, while the commissioner's court will determine the basis of compensation of officers in other counties, and of precinct officers.

That the theory of government by constitution can be reduced to the ridiculous is evident from the mass of special legislation with which Alabama considers it necessary to pad her governmental framework. During the year 1935, the general electorate gravely voted on and approved the borrowing of $1,600,000 by Mobile county; a one per cent property tax—with increases by popular vote—in the municipality of Attalla; the issuance of bonds not exceeding $130,000 for a courthouse in Lawrence county; the levying in eight school districts of a tax, not to exceed three mills, for building purposes; and permission for the legislature to regulate official fees and salaries in Calhoun and Tuscaloosa counties.

Legislatures. Although the writer is convinced that many legislators are underpaid, he was startled to learn that in one state legislative salaries were increased—in a depression year—to $15 a day, the highest per diem (but not the highest annual) payment of any state legislature (Art. II, Sec. 15). The state is wealthy Delaware—and constitutional amendments do not require popular ratification.

The vexed issue of biennial versus annual sessions reappeared in Massachusetts, and a constitutional amendment to establish the former was referred to the 1936 session. This drive of the taxpayers' leagues for biennial sessions is an excellent example of the danger of false economy, combined with a desire to follow the commonly accepted system. Massachusetts now gets legislation far better than the average. Why should less frequent sessions and hastier consideration improve things?

Elections. On September 9, Maine voted by 23,269 to 5,540 to increase the residence qualification for voters from three to six months (Art. II, Sec. 1) and by 17,855 to 10,996 to authorize the use of voting machines (Art. II, Sec. 5). On April 1, Michigan approved (485,850 to 253,530) the recount by the board of state canvassers of a tie vote for any state office except that of legislator (Art. XVI, Sec. 4).

Miscellaneous. Maine authorized, by a vote of 19,074 to 9,915, $36,000,000 of highway bonds (Art. IX, Sec. 17) and by a vote of 21,383 to 8,375 a bridge district bond issue of $500,000 (Art. IX). New York voted (1,086,701 to 538,442) to repeal the double liability of bank stockholders (Art. VIII, Sec. 7). Oklahoma accepted (185,058 to 91,189) an amendment allowing the legislature to exempt homesteads from ad valorem taxation. Delaware prohibited lotteries and pool-selling, but allowed pari-mutuel machines or totalizators (Art. II, Sec. 17). Alabama voted (30,742 to 18,189) to allow general laws for incorporation and a franchise tax on corporations, exempting building and loan associations.

REJECTED PROPOSALS

Restrictions on Amendments. In at least two states, voters decided against measures which would facilitate constitutional change. In Texas, the electorate went on record (238,258 to 214,024) against permitting special legislative sessions to submit constitutional amendments. Of far more vital importance is a recent Pennsylvania decision which leaves the state government in a most difficult position. The courts have declared the state income tax unconstitutional; borrowing powers are subject to strict limitation; amendments may be presented only at five-year intervals, and now the voters have balloted (1,184,160 to 916,949) against the calling of a constitutional convention.

Economy. To "save taxpayers' money," California refused to authorize state borrowing for building purposes (211,683 to 241,414) and anticipation of taxes and revenue (154,225 to 291,780); while Texas refused to sanction a free textbook amendment (257,815 to 280,019). New Mexico rejected homestead exemption for veterans.

Stability. New Mexico refused (6,990 to 21,527) to replace its superintendent of education by a board, and the same voters overwhelmingly sent into oblivion an amendment permitting land exchanges between the state and federal governments and further rejected proposed changes in the conduct of criminal trials. Struggling bravely to demonstrate that men are still men in the great open spaces, Oklahomans refused (114,968 to 154,669) to make women eligible for certain state offices. They also declined (113,737 to 142,664) to abolish the commissioners of the land office; while in California the voters signified disapproval of the proposed Rector Dam Authority (191,623 to 256,449).

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Direct Primary Legislation in 1934–35.[1] Although few important changes have been made in the laws regulating primary elections during the last two years, some of those which have been made are novel and may foreshadow interesting future developments.

The year immediately preceding a presidential campaign usually brings some changes in the presidential primaries, and 1935 was no exception. North Dakota has repealed its presidential primary provisions, and in Oregon repeal was voted by the legislature but defeated at a referendum vote.[2] Hereafter, delegates to the national nominating conventions in North Dakota are to be chosen by a state convention meeting at a time and place fixed by the party state central committee.[3] The Oregon law, which was defeated, provided for the choice of delegates at large by the state central committee[4] and of district delegates by district nominating committeemen.[5] Both of these presidential primary laws were poorly drawn, and it is not surprising that there should have been objection to them.[6] It is surprising, however, that in states which have been such staunch supporters of direct control of the nominating process efforts were not made to remedy these defects before repeal was attempted. The Oregon proposal was indeed a far cry from the ideals of the "People's Power League"![7]

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[1] The legislatures of all states were in regular or special session in 1934 or 1935. Massachusetts, New Jersey, New York, Rhode Island, and South Carolina held regular sessions in both 1934 and 1935; the legislatures of Kentucky, Louisiana, Mississippi, and Virginia were in regular session in 1934 only; in the remaining 39 states, regular sessions were held in 1935 only. In addition, the legislatures of some 23 states held special sessions in 1934. Although the 1935 session laws of Arkansas and West Virginia were not available when this note was written, full reports were available from their legislative reference bureaus, and this note is complete for all regular and special sessions of 1934 and the regular sessions of 1935. It does not, however, cover most of the special sessions of 1935. The writer wishes to take this opportunity to thank the American Legislators' Association and the legislative reference bureaus of the respective states for prompt and intelligent assistance in supplying material used in the preparation of this note. A particular debt of gratitude is due the staff of the Massachusetts State Library, without whose aid this work would have been impossible. Legislation concerning registration, absent voting, corrupt practices, and the conduct of elections generally is not included in this note unless it affects the primary exclusively.

[2] *Laws of North Dakota*, 1935, ch. 135, p. 169; *Oregon Laws*, 1935, ch. 261, p. 406 (defeated at referendum election, January 31, 1936, by a vote of 5 to 2).

[3] *Laws of North Dakota*, 1935, ch. 135, sec. 9, p. 172.

[4] *Oregon Laws*, 1935, ch. 261, secs. 11–13, p. 410.

[5] *Ibid.*, secs. 7–9, p. 409.

[6] For a discussion of their imperfections, see the writer's *Presidential Primary*, pp. 65–76, 87, 88.

Kentucky is the only state which has made any important extension of the scope of the direct primary. This state, which substituted an optional for a mandatory law for nominations to state-wide offices in 1920,[8] has once again made the direct primary mandatory for nominations to all state offices.[9] Minor changes in the applicability of the direct primary to local offices or geographical districts have been made by Minnesota, North Carolina, and Virginia.[10] In addition, Rhode Island, which has never adopted a direct primary, has enacted a special caucus law for the city of Portsmouth.[11]

New Jersey has changed the date of the state primary from the third Tuesday in May to the third Tuesday in September, except in presidential years, when it will be held in May in conjunction with the presidential primary as before.[12] In two other states—Massachusetts and New York—the date of the primary was temporarily shifted in 1934 to avoid conflicting with the Jewish feast of Yom Kippur.[13] Georgia has repealed an act of 1933 which provided for holding the county primary on the same day as the state primary in certain counties.[14]

One of the most extraordinary pieces of legislation yet conceived by American legislators is the new "blanket" primary law enacted by the state of Washington.[15] According to the act itself: "It is expressly declared that the purpose of this act shall be construed so as to allow all properly registered voters to vote for their choice at any primary election, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voters."[16] Every ballot is to be uniform and is to be labelled "Primary Election Ballot."[17] Candidates for each office are to be grouped together under the name of the office,[18] and in the case of every office except that of judge, the party affiliation of the individual candidate will appear after his name on the ballot.[19] Every qualified, registered voter may participate in the primary without question as to his party affiliation.[20] At last the political millenium would seem to have been achieved for the independent voter and the party maverick! Not only is the primary so "open" that he may participate in the nominations of a different party at each succeeding election, but he may even vote for a Republican candidate for the gubernatorial nomination, let us say, and at the same primary vote for a Democratic candidate for the nomination for United States senator. Thus party affiliation becomes a farce, although the party labels are retained.[21] This law may be a transition from partisan to non-partisan nominations for all offices, but at the present time it is a most peculiar hybrid.

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[7] The Oregon State Library writes of the proposal: "The newspapers showed considerable interest in the question, and the majority seemed to favor it."

[8] *Acts of the General Assembly of Kentucky*, 1920, p. 335.

[9] *Ibid.*, extra session of 1935, ch. 1, p. 5.

[10] *Laws of Minnesota*, 1935, ch. 201, p. 384 (villages of the fourth class); *Public Laws of North Carolina*, 1935, ch. 141, p. 155, ch. 365, p. 424, ch. 391, p. 605 (placing Avery, Stanley, and Watauga counties, respectively, under the state-wide primary law); *Acts of the General Assembly of Virginia*, 1934, ch. 352, p. 554 (cities having a population of 45,000 to 125,000).

[11] *Acts and Resolves of Rhode Island*, 1934, ch. 2165, p. 239. In 1930, Rhode Island passed a uniform caucus law superseding all special laws except that applying to Westerly.

[12] *Acts of New Jersey*, 1935, ch. 299, p. 935.

[13] *Acts and Resolves of Massachusetts*, 1934, ch. 89, p. 91; *Laws of New York*, 1934, ch. 160.

[14] *Acts and Resolutions of the General Assembly of Georgia*, 1935, No. 188, p. 462.

[15] *Session Laws of Washington*, 1935, ch. 26, p. 60.

A frankly non-partisan principle has been applied in the nomination of the new unicameral legislature in Nebraska.[22] A candidate qualifies by filing a declaration of candidacy and paying a fee of ten dollars.[23] The primary ballot contains no party designations of any kind, the names of candidates are rotated, and the two highest in the primary appear on the final election ballot.[24]

Montana has joined the lengthening list of states providing for non-partisan judicial nominations,[25] and Idaho has made minor changes in the non-partisan judiciary act passed in 1933.[26] Oregon has extended the non-partisan principle to nominations for county school superintendent.[27]

In those states in which the primary is a partisan affair, few important changes have been made in qualifications for participation. A Colorado amendment makes it possible for a voter who contends that an error has been made in the record of his party enrollment on the registration books to have his affiliation changed by making affidavit to that effect.[28]

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[16] *Ibid.*, ch. 26, sec. 5, p. 64.

[17] *Ibid.*, sec. 2, pp. 61–62.

[18] *Idem.*

[19] *Idem.*

[20] *Ibid.*, sec. 3, p. 63.

[21] The law does not provide that the names of those who receive the highest number of votes, irrespective of party affiliation, shall appear as the candidates in the final election. It would seem, therefore, that the Republican candidate for each office who receives the highest number of votes would fight it out in the general election with the Democratic candidate who receives the highest number of votes for the same office.

[22] *Laws of Nebraska*, 1935, ch. 112, p. 358. See also amendments to Art. III of the state constitution, adopted by referendum vote in November, 1934.

[23] *Idem.*

[24] *Idem.*

[25] *Laws of Montana*, 1935, ch. 182, p. 389.

[26] *Idaho Session Laws*, 1935, ch. 12, p. 27.

[27] *Oregon Laws*, 1935, ch. 182, p. 271.

[28] *Session Laws of Colorado*, 1935, ch. 108, p. 392.

Mississippi, which formerly required voters in the primaries to have all the qualifications of voters in the general election, has amended its law to make payment of poll taxes the only tax requirement for participation in the primary.[29] In Pennsylvania, the taxpaying qualification for voting in both primary and general elections has been eliminated,[30] and a permanent registration and party enrollment law has been enacted for second and third class cities.[31] South Carolina has made minor changes which affect the right of individuals to participate in certain local primaries.[32]

One more chapter has been written in Texas' long fight for the "white primary," although not by the legislature. Following a decision of the Supreme Court of the United States, which held unconstitutional an act of the legislature giving the party state committee power to prescribe qualifications for participation, under which Negroes had been barred,[33] the Democratic state convention, acting without express statutory recognition of its right to do so, passed a resolution barring Negroes from the primaries of the party. In 1935, the constitutionality of this action came before the Supreme Court and was upheld, largely on the ground that the discrimination against Negroes was the act of the party and not of the state.[34] In its decision, the Court emphasized the fact that although the Texas law regulates primary voting in many details, the expenses of the primary are not borne by the state, but by the party; the ballots are not furnished by the state, but by the party; and the votes are counted, and the returns made, by instrumentalities created by the party.[35] From this decision it seems clear that those states which wish to purchase white supremacy at the expense of comprehensive state regulation of the nominating process may do so, but it is doubtful whether Negroes can be barred from the primary in those states which prefer to bear the full burden of administering and financing primary elections.

A large number of changes deal with the filing of nominating papers and the conditions under which candidates may qualify for a position on the ballot. Hereafter in Idaho a candidate nominated by having his name written in on the ballot must pay the filing fee required of candidates who file nominating petitions.[36] A petition as well as a declaration of candidacy is to be required in the future in Indiana.[37] Michigan has provided that in case a candidate for nomination has changed his name, both names must be printed on the ballot.[38] Another amendment in the same state requires candidates filing nominating petitions to appear *in person* before the filing officer within fifteen days after the filing of such petition.[39] Michigan also has substituted a filing fee for a nominating petition for offices in counties having a population of 500,000 or more. However, a candidate receiving the nomination, or more than 50 per cent of the total vote received by the winning candidate, will have his fee refunded after the primary.[40] In Pennsylvania, candidates for all except judicial offices must file with their nominating petitions affidavits stating that they are not candidates for nomination to the same office of any other party.[41] Louisiana has added to the qualifications for candidacy in a primary the requirement that persons must be "bona fide and not dummy candidates."[42] This provision is administered by the state central committee, which may prescribe further qualifications.[43] Kentucky has joined the states which provide that the name of a candidate who has been defeated in the primary may not be placed on the final election ballot by independent petition.[44] Many other changes affecting the filing of nominating petitions are of minor importance.[45]

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[29] *General Laws of Mississippi*, 1934, chs. 308 and 309, pp. 579–581.

[30] Amendment to the constitution adopted November 7, 1933. See, also, *Laws of the General Assembly of Pennsylvania*, special session of 1934, No. 58.

[31] *Laws of the General Assembly of Pennsylvania*, special session of 1934, Nos. 35 and 62; 1935, Nos. 19 and 195.

[32] *Acts and Joint Resolutions of South Carolina*, 1935, No. 41, p. 48, and No. 107, p. 142.

[33] See note in this REVIEW, Vol. 28 (April, 1934), p. 268, for the history of these enactments.

[34] Grovey v. Townsend, 295 U. S. 45 (1935). For an excellent summary of the history of this long-drawn-out controversy and a discussion of the significance of the decision, see O. Douglas Weeks, "The White Primary," *Mississippi Law Journal*, December, 1935.

[35] See Weeks, *op. cit.*

Kentucky's new mandatory primary law puts her in the rapidly lengthening list of states which provide for a second, or "run-off," primary if no candidate receives a majority in the first primary.[46] Only the names of the two highest candidates appear on the second primary ballot.

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[36] *General Laws of Idaho*, 1935, ch. 123, p. 287.

[37] *Laws of Indiana*, 1935, ch. 191, p. 930.

[38] *Public Acts of Michigan*, 1935, No. 176, p. 278.

[39] *Ibid.*, No. 249, p. 421.

[40] *Ibid.*, No. 60, p. 95.

[41] *Laws of the General Assembly of Pennsylvania*, 1935, No. 154.

[42] *Acts of the State of Louisiana*, 1934, No. 110, p. 427.

[43] *Idem.*

[44] *Acts of the General Assembly of Kentucky*, 1934, ch. 63, p. 195.

[45] *General Laws of Alabama*, 1935, No. 424, p. 894 (filing dates); *General Acts and Resolutions of Florida*, 1935, ch. 16990, p. 481 (excepting justices of the supreme court from regular requirements governing the payment of filing fees); *Laws of Kansas*, 1935, ch. 172, p. 256 (filing dates); *Public Laws of North Carolina*, ch. 236, p. 257 (changing percentage of voters necessary for independent nominating petitions); *Laws of Ohio*, vol. 116, 1935, House Bill 208, p. 149 (requiring fees of those filing independent nominating petitions); *Session Laws of South Dakota*, 1935, ch. 109, p. 159 (filing certificates of nomination and withdrawal of candidacy); *Public Acts of Tennessee*, 1935, ch. 54, p. 148 (filing dates); *General and Special Laws of Texas*, 1935, ch. 129, p. 356 (filing fees); *Session Laws of Wyoming*, 1935, ch. 17, p. 12 (filing nomination papers).

[46] *Acts of the General Assembly of Kentucky*, extra session of 1935, ch. 1, sec. 5a, p. 7. This list includes Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.

A new regulation in Indiana makes it illegal to distribute "slates" or lists of candidates during primary campaigns unless the written consent of the candidates is obtained, and unless the list is printed with the authority and over the signatures of an organized group of legal voters.[47] A large number of changes deal with casting and counting primary ballots and with the conduct of elections generally. These raise problems which are not peculiar to the primary and need not be considered here.

New Mexico, which has never adopted the direct primary, has taken a step in the direction of regulating the nominating process by providing that the state central committee of each political party shall file with the secretary of state a set of rules and regulations providing for the government and organization of the party, and the manner of calling and conducting its nominating conventions.[48] Henceforth Illinois will elect party committees in townships similar to those already provided for in counties, wards, and other units.[49] Another Illinois amendment provides that when a "new" political party is organized by petition, the 25,000 signers of the petition must include 200 qualified voters from at least 50 counties within the state.[50] North Dakota has created an elaborate system of precinct, county, and state committees, and a state convention chosen by the precinct committeemen. The state convention nominates presidential electors, and elects the national committeeman and national committeewoman, as well as delegates to the national conventions.[51] Other minor changes affecting party committees and conventions have been made by Massachusetts, Michigan, New Jersey, and Nevada.[52]

Among the more important proposals made by legislators during the last two years, but defeated, may be noted, in addition to the repeal of the presidential primary in Oregon, the repeal of the state-wide, direct primary in Iowa and South Dakota, and proposals to establish the pre-primary convention in Kansas, Maine, and Ohio. In Indiana, a proposal to re-introduce the direct primary for state-wide nominations met defeat, as did a presidential primary bill in Kansas. A "blanket" primary ballot was proposed in Illinois, and the growing interest in non-partisan nominations was reflected in bills providing for non-partisan nominations of judges in Kansas and members of the state legislature in California.

The most important development of the last two years is the extension of the non-partisan principle to nominations for members of legislative bodies and its increasing popularity in fields where it has already been tried. Advocates of the direct primary idea may gain comfort from the passage of a mandatory law in Kentucky and from the failure of any state to repeal or emasculate its state-wide direct primary. The repeal of the presidential primary in North Dakota is counterbalanced by the referendum vote supporting it in Oregon. The Washington "blanket" primary act may be nothing more than an interesting "sport"; it may, however, be the beginning of the end of party nominations in this country. In any case, it is a reminder that experimentation in this intensively cultivated field is still possible.

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[47] *Laws of Indiana*, 1935, ch. 246, p. 1255.

[48] *Laws of New Mexico*, 1935, ch. 58, p. 107.

[49] *Laws of Illinois*, 1935, Senate Bill No. 481, p. 805.

[50] *Ibid.*, House Bill No. 653, p. 789.

[51] *Laws of North Dakota*, 1935, ch. 135, p. 169.

[52] *Acts and Resolves of Massachusetts*, 1934, ch. 288, p. 357. *Public Acts of Michigan*, 1935, No. 185, p. 291, and No. 233, p. 390; *Acts of New Jersey*, 1935, ch. 9, p. 19; *Statutes of the State of Nevada*, 1935, ch. 108, p. 230.

LOUISE OVERACKER.

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New Mexico: A Problem of Parochialism in Transition. Parochialism occurs as a problem when there is a combination of such factors as geographical isolation, independent historical traditions, racial or religious differences plus local or class economic interests. In New Mexico, one finds all of these factors present, and the variety of combinations produced by cross-currents and cleavages on party issues are kaleidoscopic. In the state, one finds a race-conscious group with social, economic, and cultural differences which mark it off from other people, and possessing a class solidarity in politics; and a distinct ethno-political alignment is the result.

For nearly two hundred years before American occupation, New Mexico was geographically cut off by natural barriers from Old Mexico, and the colonists developed a distinct culture. The patron system worked well enough, as the peons were too ignorant for self-government. The peon looked to the patron for food, shelter, and advice in all matters of the temporal, while the *padre* looked after the spiritual, life. Under American rule, the peon, even though illiterate, has acquired some property and has attained political importance because he has a vote. Politically, these simple people still look to the patron (now a political boss) for guidance and follow with a blind devotion.

The peons, indeed, have emerged as a middle class, and through political affiliations have been able to control many elections. They have dominated the state politically through bosses and have in turn been dominated. In the constitution, the court system, statutes, and local government, they have safeguarded themselves. At the same time, they have been the victims of unscrupulous politicians and merchants.

By placing election results on a map of the state, one finds a sectional division as well as a close and well defined ethnic correlation. In the analysis, the ratio of Spanish-Americans[1] to Anglos placed on each party's ticket was noted and the winners in each county carefully tabulated. The counties to the east and southeast, bordering Texas and Oklahoma, are completely Democratic and Anglo in population. The Rio Grande runs from north to south and bisects the state into nearly equal parts. The counties along the Rio are Spanish-American, and in the northern mountainous counties the majorities are large.

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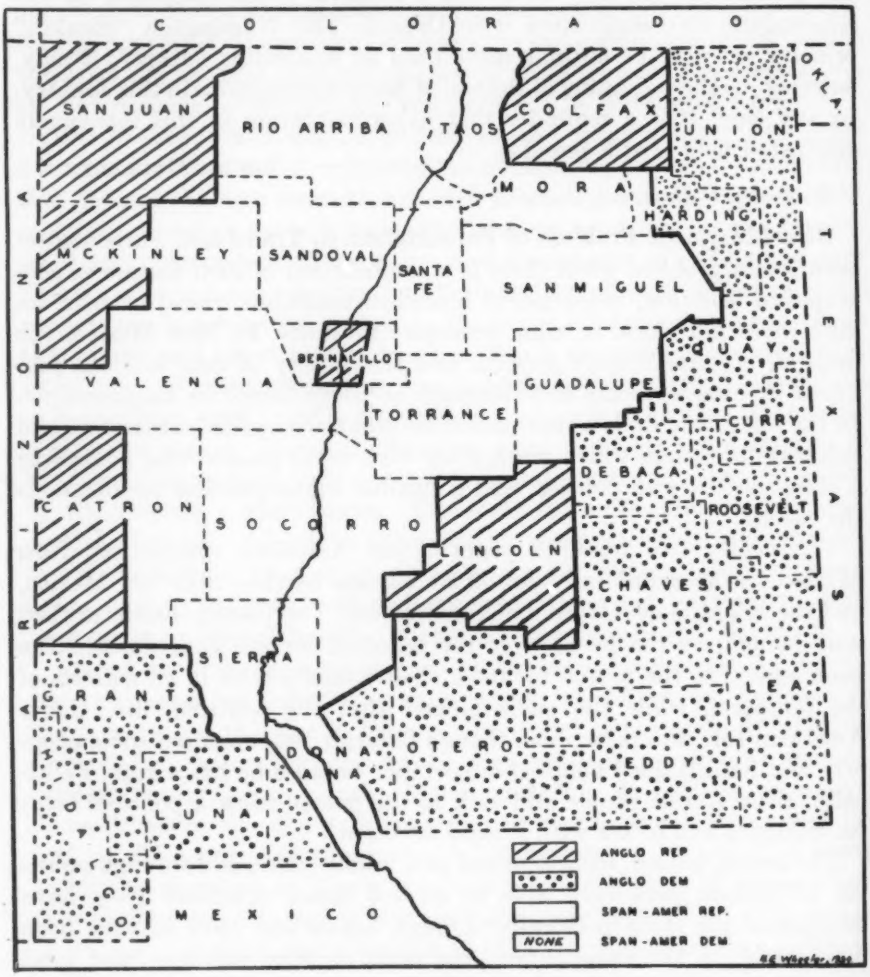
[1] The classification of the population of New Mexico into Spanish Americans and Anglos is poor anthropology. However, some form must be used. The term "Spanish American" refers to those people who are of original Spanish descent and Anglo refers to those of extraction other than Spanish. The census reports make no distinction.


COLORADO
OKLA.
ARIZONA
TEXAS
MEXICO
SAN JUAN
RIO ARRIBA
TAOS
COLFAX
UNION
MORA
HARDING
McKINLEY
SANDOVAL
SANTA FE
SAN MIGUEL
BERNALILLO
VALENCIA
GUADALUPE
QUAY
TORRANCE
CURRY
DE BACA
ROOSEVELT
CATRON
SOCORRO
LINCOLN
CHAVES
SIERRA
GRANT
LEA
OTERO
DONA ANA
EDDY
LUNA
HIDALGO
▨ ANGLO REP
ANGLO DEM
☐ SPAN-AMER REP.
NONE SPAN-AMER DEM
R.E. Wheeler, '39

Politico-ethnic alignment in New Mexico

In the Democratic counties, the people are from the "Solid South." They have transplanted their culture and with it certain political and social ideologies corresponding to those found in Texas. They almost invariably fail to understand the Spanish and look upon them with a racial feeling second only to those feelings reserved for the Negro. The counties of Eddy, Lea, De Baca, and practically speaking Chavez, are so solidly Democratic that the Republican party, even in its heyday, was unable to gain any offices and for the most part neglected so much as to put up a ticket.

The political alignment between the Spanish and the Anglos as shown here was responsible for the election of Senator Bronson Cutting in 1928. Working through their Eastern friend, the Spanish drove a wedge between Anglo groupings and secured the balance of power. Cutting shifted the support of the Spanish *bloc* of which he was leader from one party to another, supporting those candidates whom he believed best fitted for office. Since his death, the group is without an effective leader.

The time was when the Republican stalwarts had little difficulty at elections, but the parochialism which stood for predictability has passed. Such men as Holm Bursom, the successor to A. B. Fall in the Senate, former Congressman Simms and his wife (the former Ruth Hanna McCormick[2]) are left stranded in the desert. This is because of their failure to swing the Spanish *bloc*. D. W. Brogan, in *Government of the People,* saw the situation in New Mexico when he observed that "more than once a cattle king has seen his human flock revolt with the same dazed surprise with which the gentry of Clare saw their tenants vote for O'Connell instead of for Vesey-Fitzgerald."

For the sociologist, New Mexico presents a problem of cultural assimilation among three groups—Anglos, Indians, and Spanish-Americans. For the political scientist, many problems are presented. Any successful plan for county home rule and county consolidation must take into account such differences as have but briefly been shown here. New Mexico does not have a direct primary system, the Anglo politicians having resisted all attempts to adopt one. Observing the effects of parochialism within the state, one can readily understand what results might follow from such a system. The educator faces countless problems as a result of the race-conscious group, not only in the common schools but in the higher institutions. New Mexico thus stands as a laboratory in which those interested in the social sciences may observe social phenomena in forms considerably different from those to be discerned in other states.

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[2] *Albuquerque Journal,* Nov. 8, 1934. "I traveled 82 miles on election day in my car, transporting Democrats to and from the polls." Ruth Hanna Simms. It is difficult to think of Mark Hanna's daughter aiding the Democratic party!

"Preliminary Hearings" in Naturalization Administration. In the application of statutes and regulations governing naturalization in the United States, an ingenious administrative device has been evolved which avoids the ineffectiveness and cumbersomeness of the ordinary courts as well as the abuses occasionally characterizing the non-reviewable action of executive agencies at the other extreme. Under an act of 1926, "preliminary hearings" on naturalization petitions are conducted by examiners of the Naturalization Service designated by federal district judges, and recommendations are made to the court which has jurisdiction to grant or withhold citizenship. The examiner resembles a master or a referee rather than an administrative tribunal; yet, unlike many officers of courts in equity matters, he is subject to effective supervision by his administrative superiors.

In essence, the administration of naturalization legislation involves the examination of particular cases and the application to them of relatively well defined general principles. The applicant for citizenship must meet the requisites pertaining to such matters as color, age, residence, and legal entry into the United States, and must be "of good moral character and attached to the principles of the Constitution."[1] Before 1906, the determination of these facts was solely a judicial function performed by state and federal courts. The judicial hierarchies failed to develop internal administrative controls to assure uniformity and effectiveness in the application of the legal standards in these *ex parte* proceedings, or to prevent fraudulent naturalizations which became widespread. To remedy these long-existing defects, federal administrative supervision of naturalization was inaugurated in 1906. Since that time, each applicant has been required to appear in open court at fixed times with two qualified witnesses for a "final hearing" on his petition. This has afforded the Naturalization Bureau an opportunity to send examiners to the hearings to question applicants regarding their qualifications. Although an examiner could object to the admission of applicants, final authority to grant petitions remained in the courts.[2]

The rapid increase in the number of applicants for citizenship, especially after the World War, placed no inconsiderable burden upon the courts. During 1926, more than five times as many petitions were granted as in 1908; the ratio had been even greater during the first three post-war years.[3] "There have been congestions at some court sessions," the Commissioner of Naturalization reported, "which have at times resulted in an almost virtual marching through the court room of aliens and their witnesses in such large numbers as to preclude any deliberate hearing of their petitions and to constitute no actual judicial proceeding in their admission to citizenship."[4] To lessen this congestion, to expedite procedure, and to permit more effective administration of the law, Congress, by act of June 8, 1926 (44 Stat. at Large, pt. 2, p. 709, ch. 582), bestowed discretionary authority upon judges of the United States district courts to designate examiners from the Naturalization Bureau (now the Immigration and Naturalization Service) to hold "preliminary hearings" on petitions for naturalization, and to make recommendations thereon to the court at the time set for the "final hearing." Chief Justice Taft had urged the adoption of this legislation to relieve the federal judges of the details of the naturalization process.[5]

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[1] See Luella Gettys, *The Law of Citizenship in the United States* (1934), Chap. 3.

[2] To implement the policy of the act of 1906, provisions as to uniform records, forms, fees, and reports were included, and a delay of 90 days was prescribed between the filing of a petition for citizenship and "final hearing" thereon.

Although no "final hearing" can take place until at least 90 days after the filing of the petition for citizenship, no specified time need elapse between the filing of the petition and the "preliminary hearing." The only requisite is that it must be held some time after the petition is filed and before the date set for the "final hearing." As a matter of practice, the "preliminary hearing" ordinarily takes place immediately after the petition is filed, so that the witnesses usually need appear only once. They are required to be on hand when the petition is filed to determine

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[3] The number of certificates granted since 1907 is as follows:

Year	Number	Year	Number	Year	Number
1907*	7,491	1916	87,831	1925	152,457
1908	25,975	1917	88,104	1926	146,331
1909	38,374	1918	151,449	1927	199,804
1910	49,448	1919	217,358	1928	233,155
1911	56,683	1920	177,683	1929	224,728
1912	70,310	1921	181,292	1930	169,377
1913	83,561	1922	170,447	1931	143,495
1914	104,145	1923	145,084	1932	136,600
1915	91,848	1924	150,510	1933	113,363
				1934	113,669

* 9 months only. From *Annual Reports* of Commissioner of Naturalization.

[4] *Annual Report*, 1924, p. 18.

[5] The Naturalization Bureau had suggested the creation of naturalization courts, "preferably administrative, with the right of appeal to the appropriate United States court." *Report*, 1924, p. 18. For spirited opposition to special administrative tribunals for this function, see Max J. Kohler, "Should Naturalization be Made an Exclusively Administrative Function?," *Foreign Language Information Service*, March 28, 1934.

their competence, and once the petition is filed, the "preliminary hearing" may take place.

At the "preliminary hearing," which, according to departmental regulation, is open to the public, each applicant appears with his two witnesses, who must be citizens of the United States. They are questioned by the "designated examiner" as to the residence, character, and general qualifications of the petitioner. If the examiner is satisfied, the witnesses are dismissed and are excused from appearance at the "final hearing" in court. Nevertheless, if the petitioner desires, he has a right to demand the examination of himself and his witnesses in open court; the judge also has discretionary power to order the examination in court.

After the witnesses have been dismissed, the petitioner is questioned to determine whether or not he is mentally and morally qualified for citizenship. By departmental rule, the matter of arrests and convictions must be investigated thoroughly and particular attention must be given to the marital history of the applicant, including the whereabouts of the wife and minor children, if any, and whether or not the applicant is contributing to their support if separated from them. The applicant is required to manifest attachment to the principles of the Constitution and sympathy for the government of the United States. To determine these latter points, he is orally examined on the Constitution and government of the United States. No uniform examination has been prescribed by the Department, and as a result there is wide divergence in the nature of the questions asked by different examiners, with ample discretion to adapt the examination to different applicants. The essential requirement is a general understanding of the principles underlying our form of government, although questions regarding national and local politics are often included. If the examiner is satisfied that the applicant is sufficiently familiar with our institutions to justify granting him the privileges of citizenship, he passes the applicant; if the applicant fails on the examination, the examiner may allow him to continue his study and return for a second examination before the date set for the "final hearing," thus giving him another opportunity before the final report is made to the court; then again, the case may be continued.

The results of the "preliminary hearings" are reported to the court, at the time set for the "final hearing," by the examiner, who may recommend that the petition be granted, be denied, or be continued. Denials and continuances are most frequently recommended on grounds of ignorance of our government, immoral character, incompetent witnesses, insufficient evidence, invalid declarations, and lack of prosecution. The judge may approve the recommendations of the examiner or not as he sees fit. If the examiner is overruled, the government may appeal. If the petitions are approved, the applicants are admitted to citizenship and take the oath of allegiance in court. Although the recommendations of the examiner may be overruled, in practice the great majority of recommendations are approved by the courts, as is indicated by Table I.

The status of the "designated examiner" while exercising duties connected with "preliminary hearings" is an interesting one: he is considered a judicial rather than an administrative officer and is likened to a master in chancery or a referee in bankruptcy. He may take testimony in any way affecting the admissibility of any petitioner; he may subpœna witnesses; he may administer oaths. In view of the power to administer oaths, applicants who give false testimony to examiners may be prosecuted for perjury. In 1929, this point was considered by the United States circuit court of appeals for the first district in the case of Gaglione v. United States, 35 Fed. (2d) 496. Gaglione, who had appeared for a "preliminary hearing" and had been duly sworn by the "designated examiner," had answered "no" to the question, "Have you ever been arrested?" Subsequent investigation revealed that he had been arrested, not only once but several times. He was thereafter convicted for perjury in a federal district court, which conviction was upheld on appeal to the circuit court.

TABLE I

RECOMMENDATIONS ON PETITIONS BY EXAMINERS CONDUCTING "PRELIMINARY HEARINGS" AND COURT ACTION THEREON, 1929–34, INCLUSIVE*

Recommendations by Examiners		*Approved by Courts*	*Percentage Approved*
To be granted	542,996	541,868	99.8
To be denied	26,402	20,568	77.9
To be continued	21,929	21,795	99.4

* The figures for 1927 and 1928 are not included in these totals because of certain internal inconsistencies in the figures for those years in the reports of the Bureau of Naturalization.

In denying Gaglione's contention that it was no part of the examiner's duty to inquire about arrests, the circuit court pointed out that such an inquiry was "pertinent evidence as to whether or not he had for 'five years at least . . . behaved as a man of good moral character'." The court further held that it was the duty of the examiner to "take all evidence pertinent to the proper performance of his duty in making a recommendation to the court concerning the fitness of the applicant for naturalization, including his moral character."

As already stated, at least 90 days must elapse between the filing of the petition and the "final hearing." In this way, ample time is provided for investigation of the merits of each application, especially if testimony is given at the "preliminary hearing" which appears questionable. In one naturalization jurisdiction, it is the practice of the naturalization authorities to send daily to police headquarters the names of petitioners for reports on arrests, fines, or court record of any kind. This facilitates investigation and has frequently brought to light violations of the law not acknowledged by the applicant at the "preliminary hearing." If necessary, further inquiries are made by naturalization investigators. One example will indicate a not uncommon situation. An applicant stated at a "preliminary hearing" that he was divorced. Upon investigation of court records, it was found that the decree was interlocutory only. On further investigation and questioning of the applicant, it was brought to light that he had married again before the decree became final. Furthermore, this applicant had lived here only three years and both he and his witnesses had falsely testified to his having lived in the United States for five years.

The necessity for exhaustive investigation of applications is quite evident when one considers the amount and nature of false testimony applicants are prone to give. In one naturalization jurisdiction alone, at one "final hearing" in open court, petitions were denied to applicants who, at the "preliminary hearings" during the preceding three months, had given false testimony on as wide a variety of matters as arrests, fines, marital status, facts pertaining to alimony or non-support, illegal possession of liquor, legal entry into the United States, and previous filing of petition. One applicant whose petition was denied because of false testimony had said that he was not married when he came to this country from Canada. Upon investigation of the immigration record of his entry into the United States, it was shown that he had said at that time that he was a widower. After a thorough investigation, it was found that the applicant had a wife and child in Canada, and that after he had been in this country for only seven months he had filed suit for divorce, falsely stating that he had resided in the state for one year. The divorce suit had been dismissed for lack of residence, and the petition for citizenship was denied, needless to say, for false testimony.

Incidentally, there has been some criticism of the ninety-day interim required by statute between the filing of the petition and the "final hearing." Recommendations for its repeal have been made on the ground that the Service does not need so much time to investigate each case and that after the investigation has been completed a much longer delay in acquiring citizenship may result in case the applicant has just missed a term of court and has to wait several months until the next term.[6] (In some courts, naturalization hearings are held only twice a year.) It would seem, however, that as a matter of general policy and administrative practice, a reasonable period of time should not only be allowed but be required for investigation. Absolute repeal might very easily lead to laxity in investigation and encourage efforts to secure citizenship fraudulently. Because of the tendency of applicants to conceal violations of local laws, attempts to acquire citizenship by the evasion of some of the requirements, conspiracies to enter the country illegally, violations of the immigration laws, and many other irregularities, considerable time is required for thorough investigation. The statutory prescription of delay relieves naturalization officials of pressures and importunities to expedite the procedure unduly for questionable purposes. The inconvenience of a few months' delay to applicants is outweighed by the higher degree of effectiveness in administration which that delay makes possible.

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[6] "Recommendations of the National Council on Naturalization and Citizenship," *New York State Bar Association Bulletin*, May, 1934, p. 288.

As has been noted, the "preliminary hearing" is a permissive rather than a mandatory feature of naturalization procedure in the federal courts. During the first year of its operation, 56 out of the 238 courts empowered to adopt it did so.[7] In his annual report covering the first year of operation of the act, the Commissioner of Naturalization stated that it had been of the highest success in the service that it had been possible to render to the public and in the relief which had been afforded to the various courts. Since that time, 90 per cent of the courts permitted to do so have adopted this procedure. It has been suggested that the procedure be extended to all courts.[8] While there are approximately 260 federal courts exercising naturalization jurisdiction, there are some 1,800 other courts that also naturalize aliens.[9] As a matter of fact, however, over half of the naturalization petitions are now heard in federal courts.[10] It has become the practice of state courts situated near a federal court to relinquish their naturalization jurisdiction to the federal court in their area. As a consequence, of the total number of naturalization petitions granted and denied in 1932, approximately 60 per cent were granted or denied in pursuance of recommendations based on "preliminary hearings" conducted under the authority of federal courts.[11] Thus, while the number of courts having naturalization jurisdiction far outnumbers the courts empowered to hold "preliminary hearings," the bulk of petitions is heard in the latter group of courts. Furthermore, it would be impractical to extend this procedure at once to all courts, in view of the fact that an adequate number of trained examiners is not available. Gradual extension might be possible until sufficient personnel should be trained, or, as an alternative, naturalization jurisdiction might be withdrawn from state courts and restricted to federal courts.

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[7] Commissioner of Naturalization, *Annual Report*, 1927, p. 7.

[8] "Recommendations of the National Council on Naturalization and Citizenship," *New York State Bar Association Bulletin*, May, 1934, p. 289.

[9] Department of Labor, *Report*, 1933, p. 84.

[10] Of the total number of naturalization certificates issued, the federal courts granted 23 per cent in 1914, 45 per cent in 1926, and 63 per cent in 1932. See appropriate *Annual Reports* of the Commissioner of Naturalization.

[11] The precise proportion of all court actions on petitions (grants, denials, continuances) preceded by "preliminary hearings" cannot be ascertained, although it probably does not diverge markedly from the proportion of grants and denials preceded by such action.

Although there is controversy as to the wisdom of some of the requirements for naturalization in the United States, the application of both the controverted and accepted standards undoubtedly has become more effective as a result of the introduction of "preliminary hearings." Further revision of the whole procedure, however, may occur in the course of time. Two tendencies noted from the approximate ten-year period of operation of "preliminary hearings" may foreshadow future changes in the administration of naturalization matters. In the first place, both in its conception and in its operation, "preliminary hearing" procedure marks a distinct tendency away from naturalization as a judicial process. By virtually delegating judicial authority to the "designated examiner," the action of the court has become practically a matter of routine approval. Another trend has been toward exclusive federal control by the propensity of state courts to relinquish their naturalization jurisdiction to federal courts. These two tendencies may culminate both in exclusive federal control and in a complete transfer of responsibility for naturalization from the courts to administrative agencies.

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JUDICIAL AFFAIRS

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Chicago, Illinois

Judicial Influence. It is axiomatic that some supreme courts are more influential than others. A dictum by one judge may carry more weight than a decision by another. Anyone who has studied the opinions of our highest courts is constantly assigning values to them, and the combination of these impressions may determine the relative standing of these tribunals for that individual. That this process of appreciation or depreciation is usually unconscious, and frequently irrational, does not make the prestige[1] which results from it any less real or less potent a factor.[2]

No one would claim that reputation is the only standard by which a court should be judged. A thoroughly satisfactory tribunal must have many qualities, but certainly the esteem accorded it is one of its most valuable assets. The finality of the decisions of a court of last resort and the importance of the conflicts of interests which it must settle demand a high degree of confidence in its intelligence and integrity. Furthermore, the duties of a court to develop the unwritten law and to interpret the statutes render its prestige a matter of prime concern. Lawyers look to it for statements of the law, teachers of jurisprudence require their students to study its opinions, and tribunals in other states as well as its own may accord weight to its views. The extent to which a court is able to mold the law depends to a considerable degree on the esteem in which it is held.

This article reports an attempt to secure comparable data with respect to the professional reputations of the various supreme courts—data which will be more complete and accurate, more capable of measurement, than casual remarks.

Esteem by Law Professors. The initial investigation secured data concerning the attitudes of law school professors toward the various courts. Two methods were used. During the spring of 1931, a form was sent to each of the 600 law professors in schools which were members of the

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[1] "We understand prestige to mean the attribute of social appreciation which may attach to a person, a group, or an institution, and which may vary not only from high intensity to low, but also from positive to negative poles." L. D. White, *Further Contributions to the Prestige Value of Public Employment* (Chicago, 1932), p. 78.

[2] "A large proportion of the general opinions of mankind are derived merely from authority, and are entertained without any distinct understanding of the evidence on which they rest, or the argumentative grounds by which they are supported." Sir George Cornewall Lewis, *Essay on the Influence of Authority in Matters of Opinion* (London, 1875), p. 5.

Association of American Law Schools. This form requested the professor to classify each supreme court, if he was familiar with its work, in one of seven categories ranging from lowest esteem to highest esteem. He was asked to base his judgment on the work of the court since 1900, and merely to indicate his reaction to the various courts without attempting to analyze the bases for his opinion. It was not necessary for each professor to give a rating to the highest court in every one of the 48 states. He was requested to rate only those courts concerning which he had a reasonable basis of judgment.

Returns were received from 259 professors located in 37 states and the District of Columbia. Table I shows the geographical distribution of the professors who returned the forms. All sections of the country were represented, although, of course, not in proportion to their population, or even to the enrollment of the law schools located in them.

TABLE I

GEOGRAPHICAL DISTRIBUTION OF RATERS

State	*No. of Raters per State*	*State*	*No. of Raters per State*
Alabama	3	Nebraska	3
Arizona	0	Nevada	0
Arkansas	4	New Hampshire	0
California	17	New Jersey	1
Colorado	11	New Mexico	0
Connecticut	7	New York	8
Delaware	0	North Carolina	4
Florida	0	North Dakota	3
Georgia	4	Ohio	20
Idaho	1	Oklahoma	2
Illinois	32	Oregon	8
Indiana	11	Pennsylvania	12
Iowa	6	Rhode Island	0
Kansas	7	South Carolina	1
Kentucky	1	South Dakota	1
Louisiana	5	Tennessee	6
Maine	0	Texas	5
Maryland	0	Utah	3
Massachusetts	21	Vermont	0
Michigan	8	Virginia	4
Minnesota	4	Washington	4
Mississippi	3	West Virginia	3
Missouri	7	Wisconsin	6
Montana	0	Wyoming	4
		District of Columbia	9

A number of professors lacked enthusiasm for the project. One uncompromising westerner asserted: "As an instructor in law and as an active practitioner, mostly in the courts of the United States, I must very positively disapprove of this inquiry." The carefully prepared comments of other more sympathetic critics were exceedingly helpful in clarifying the issues and in interpreting the data gathered from the ratings submitted.

The difficulty of assigning the ratings requested was brought out in a number of these comments. Very few law professors are familiar with the work of all of the courts, and it was necessary to choose the few concerning which they had a reasonable basis of knowledge. In many instances, a court might be highly esteemed for its decisions in certain classes of cases, while in other subjects its rating might be low. If the range between the good and bad work of a court was great, it might be very difficult to strike an average. It was, likewise, necessary to balance the standing of the court in the first decade of the period with its standing in the last decade. Even if changes in personnel had not altered the general esteem of the court over the thirty-year period, there was every probability that the court at any one time would contain judges of greatly varying prestige. Finally, the form called for a rating into seven classes. "Certain courts might be rated as 'good courts' or the reverse," but as one professor insisted, to separate them into seven ranks was "too subtle for me."

The esteem in which a court is held is, of course, purely subjective with the rater. It may be based on snap-judgment, prejudice, impressions, or even a flip of a coin. The number of chance factors that may influence a rater's opinion are infinite, and for this reason one modest consultee declared that his ratings were "of no value except perhaps to show how little worthy my esteem is."

The significance of the ratings lies largely in the story they tell of the impressions which members of law school faculties have of the courts. Whether or not these impressions are justified is another matter. An index of esteem is intended to be a gauge of opinion—not an objective criterion of worth. At the same time, few would say that the quality of work of a court has no effect on the esteem in which it is held. If the composite rating of a court faithfully represents its prestige among law teachers, it must be presumed that there is some basis for that prestige.[3] It is obvious that the basis was not merely the whim of the rater. Had this been so, the distribution of ratings would have shown no differentials between the various states.

[3] It is possible, of course, to attach too great a significance to the ratings given. One professor was afraid that the highest court in his state might do that very thing and wrote: "I rather incline to the view that, human nature being what it is, the judges of the supreme court of . . . might take considerable exception to an adverse vote by the faculty of the University of . . . Law School, and I question whether the matter might stop at such irritation, and might not lead to the court's changing its views or its methods."

Certainly the professors in American law schools might be expected to have a better basis for judging the work of the state supreme courts than any other group. Most of these institutions pride themselves on the fact that their outlook is national rather than local or only state-wide. Their faculties are composed of men who are as impartial and as informed as any group in the United States. Teachers of law spend their lives studying the cases in their fields, and frequently go over an entire branch of the law when preparing a case-book for student use, or when writing a treatise for the benefit of practitioners. It is true that very few of these professors have a complete grasp of the work of the courts in all of the fields of law. But, taken as a body, it seems reasonable to assume that all of the fields are covered.[4]

Table II gives the number of times each court was rated in each of the seven classifications. A casual inspection of this table discloses three facts: (1) some courts were given ratings by a much larger number of professors than were others; (2) there was a greater agreement of opinion concerning the standing of some courts than of others; (3) the ratings for each court tended to cluster around one of the classes.

Professors were requested to rate only those courts concerning which they had "a reasonable basis of judgment." The wide variation between the number of ratings assigned to the various courts, therefore, may be presumed to indicate that fewer professors had a reasonable basis of judging the esteem of some courts than of others. If this be true, the number of times a court was checked on the forms may be taken as a rough index of the extent to which its work is known to the teachers of law. The New York court of appeals was most widely known, being checked on 238 forms, while only 39 raters felt that they had a reasonable basis of judging the esteem of the New Mexico supreme court. Since it is clearly necessary that the work of a court be widely known before it can exert more than a local influence, the number of times a court was rated on the forms presents a significant index of one of the prerequisites of prestige.[5]

[4] There was a possibility that the ratings secured might not be representative of the entire group of law professors because the older, better informed, and more cautious instructors might hesitate to return the forms. The returns dispelled this fear, however. Although there was no request that the forms be signed, many were, and the names showed clearly that many of the forms were returned by leaders in the profession.

[5] It is interesting to observe that the New York court of appeals was the most widely known notwithstanding that only 8 of the 259 raters were from that state. Likewise, New Jersey (with one rater) and Michigan (with eight raters) had courts more widely known than California (with 17 raters) or Ohio (with 20 raters). In general, however, there was some slight relation between the number of forms returned from a state and the number of times the court of that state was rated. The coëfficient of correlation between these two variables was .50 ± .08.

Table II

RATINGS OF ESTEEM BY LAW PROFESSORS

State	*Lowest Esteem*					*Highest Esteem*		*Total*
	I	*II*	*III*	*IV*	*V*	*VI*	*VII*	*Ratings*
Alabama	5	15	12	18	19	6	4	79
Arizona	9	15	9	5	2	1	0	41
Arkansas	23	14	8	7	7	1	0	60
California	0	8	12	39	47	29	12	147
Colorado	3	5	15	27	13	6	1	70
Connecticut	0	0	2	20	26	52	7	107
Delaware	1	1	5	23	8	5	2	45
Florida	17	20	9	11	3	2	0	62
Georgia	20	17	15	17	13	0	0	82
Idaho	8	15	13	8	4	2	1	51
Illinois	6	12	25	38	40	49	15	185
Indiana	15	20	29	30	18	7	1	120
Iowa	2	5	20	28	32	17	3	107
Kansas	2	3	18	22	33	18	5	101
Kentucky	3	13	17	16	15	8	0	72
Louisiana	5	8	16	11	10	3	0	53
Maine	1	1	3	7	31	21	4	68
Maryland	1	1	5	14	22	20	3	66
Massachusetts	2	4	4	12	31	73	107	233
Michigan	2	3	11	26	39	60	16	157
Minnesota	0	1	6	22	44	36	8	117
Mississippi	22	23	15	11	3	0	0	74
Missouri	8	10	20	24	26	12	1	101
Montana	6	12	15	16	7	0	0	56
Nebraska	6	5	15	25	14	0	1	66
Nevada	13	8	11	10	2	1	0	45
New Hampshire	0	1	6	10	26	16	10	69
New Jersey	1	1	5	11	37	74	33	162
New Mexico	17	7	7	5	0	3	0	39
New York	0	0	0	4	13	54	167	238
North Carolina	3	9	11	20	30	18	2	93
North Dakota	17	11	16	13	6	4	1	68
Ohio	4	12	21	31	42	26	10	146
Oklahoma	15	21	16	9	8	2	1	72
Oregon	5	14	17	21	10	8	0	75
Pennsylvania	4	5	13	27	42	48	21	160
Rhode Island	0	1	4	16	20	13	5	59
South Carolina	9	15	17	11	6	1	1	60
South Dakota	15	10	15	5	5	1	0	51
Tennessee	7	14	20	10	13	2	1	67
Texas	17	22	22	21	18	3	0	103
Utah	7	6	12	10	6	2	0	43
Vermont	0	1	4	7	29	11	1	53
Virginia	1	1	13	22	22	15	2	76
Washington	5	8	12	32	13	10	1	81
West Virginia	2	3	19	21	18	3	1	67
Wisconsin	2	0	4	26	47	35	15	129
Wyoming	6	13	9	9	5	2	2	46
U. S. Supreme Court—	0	0	0	5	11	39	179	234

It was hardly to be expected that 259 professors of law from widely separated sections of the United States would unanimously agree as to the esteem in which they held any one of the state supreme courts. The fact that the decisions of some courts on certain subjects are more highly regarded than the decisions of the same courts on other subjects is well known. Furthermore, some professors may have been more influenced by changes in the standing of a court during a part of the period covered. It is significant, however, that there was much greater agreement of opinion with respect to some courts than with respect to others. Two-thirds of the professors who rated the New York court of appeals gave it the highest rating. On the other hand, the ratings given the Texas supreme court were scattered over six classes, with no more than one-fifth of them in any one class. In general, it will be observed that there was more agreement of opinion concerning the standing of the New England courts than concerning the standing of the courts in other states.

By using the method of "equal appearing intervals" developed by Thurstone,[6] it is possible to assign a numerical value to the extent of agreement of opinion concerning each court. This method assumes that the difference in esteem between any two rating classes is the same as the difference in esteem between any other two rating classes. Thus the seven columns of the rating form are taken to represent a scale of esteem, with seven equal gradations from the lowest to the highest. Accordingly, the ratings of each court can be arranged to form a curve on the scale represented by the seven classes of esteem.[7] Steep curves occur when the opinion of the raters regarding the individual courts is in substantial agreement. But if the curve is a flat one, it indicates considerable difference of opinion. Likewise, the number of spaces on the scales which are required to include the middle half of the ratings for each court becomes a measure of the disagreement of the raters concerning that court. The more space the middle half of the ratings occupies, the greater the disagreement. This index of disagreement is given in Table III.[8]

A comparison of the index of agreement with the number of raters who expressed an opinion on each court shows that there is little relation

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[6] L. L. Thurstone and E. J. Chane, *The Measurement of Attitude* (Chicago, 1929). See especially Chap. 3.

[7] In this study, the data were plotted free hand to give a smoothed cumulative frequency curve.

[8] The measure used was the difference between the quartiles ($Q_3 - Q_1$). In cases where the first quartile fell in the same scale unit as the median, it was assumed that only part of the complete curve was available. In those cases, the position of the missing quartile was determined on the basis of the projected curve. The mean deviation of the ratings for each state was also computed, and it was found that there was substantial agreement between the two indexes.

TABLE III

INDEX OF DISAGREEMENT OF OPINION CONCERNING EACH COURT

State	*Lack of Agreement**	*State*	*Lack of Agreement**
Alabama	2.4	Nebraska	1.5
Arizona	1.6	Nevada	2.0
Arkansas	2.8	New Hampshire	1.3
California	1.7	New Jersey	1.3
Colorado	1.4	New Mexico	2.8
Connecticut	1.3	New York	1.1
Delaware	1.0	North Carolina	1.9
Florida	2.0	North Dakota	2.5
Georgia	2.5	Ohio	2.0
Idaho	1.8	Oklahoma	2.1
Illinois	2.1	Oregon	1.9
Indiana	2.1	Pennsylvania	1.8
Iowa	1.7	Rhode Island	1.4
Kansas	1.7	South Carolina	1.9
Kentucky	2.1	South Dakota	2.0
Louisiana	2.0	Tennessee	2.2
Maine	.9	Texas	2.5
Maryland	1.5	Utah	2.1
Massachusetts	1.4	Vermont	.9
Michigan	1.6	Virginia	1.7
Minnesota	1.3	Washington	1.8
Mississippi	1.8	West Virginia	1.4
Missouri	2.1	Wisconsin	1.3
Montana	1.8	Wyoming	2.3
		U. S. Supreme Court	1.0

* The maximum possible range of disagreement was 0.0 to 6.0. The lower the figure, the greater the agreement. See note 8 above.

between the two.[9] It would seem, therefore, that an increase in the number of raters who felt they had a reasonable basis of judging a court would not materially increase the agreement of opinion concerning it.

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[9] The coëfficient of correlation between the index of agreement and the number of ratings for each state was −.25 ±.09. The coëfficients of correlation used in this article were computed by the product-moment formula, using the method described in F. D. Mills, *Statistical Methods* (New York, 1924), pp. 372–378, 402–403. To aid in the interpretation of the coëfficient, and as a check on the computations, the data were plotted on graph paper and the coëfficient estimated from the regression lines. Due to the specially high standing of the New York and Massachusetts courts, the coëfficients are somewhat higher than the data for the other courts would have given. On the other hand, the data in some instances were slightly curvilinear, and in those cases the coëfficient of correlation understates the amount of relationship between the variables. Usually these two factors tended to neutralize each other, and it is believed that the coëfficients given represent the general situation with reasonable fidelity.

Using a similar method, it is possible to determine the median, or average, of the estimates for any one court. This index is the point on the scale which divides the lower half of the estimates from the upper half. One half of the raters felt that the court was superior to this position, while the other half felt that it was inferior. Table IV gives this scale value—or esteem index—for each of the courts.

TABLE IV

ESTEEM OF SUPREME COURTS BY LAW PROFESSORS

State	*Average Esteem Rating**	*State*	*Average Esteem Rating**
Alabama	3.4	Nebraska	3.3
Arizona	1.7	Nevada	2.1
Arkansas	1.5	New Hampshire	4.7
California	4.3	New Jersey	5.4
Colorado	3.4	New Mexico	1.3
Connecticut	5.1	New York	6.5
Delaware	3.7	North Carolina	4.1
Florida	1.6	North Dakota	2.3
Georgia	2.3	Ohio	4.1
Idaho	2.1	Oklahoma	2.0
Illinois	4.3	Oregon	3.0
Indiana	2.9	Pennsylvania	4.7
Iowa	3.9	Rhode Island	4.4
Kansas	4.1	South Carolina	2.3
Kentucky	3.2	South Dakota	1.8
Louisiana	2.8	Tennessee	2.7
Maine	4.8	Texas	2.5
Maryland	4.6	Utah	2.6
Massachusetts	5.8	Vermont	4.6
Michigan	4.9	Virginia	4.0
Minnesota	4.6	Washington	3.5
Mississippi	1.6	West Virginia	3.4
Missouri	3.5	Wisconsin	4.7
Montana	2.6	Wyoming	2.4
		U. S. Supreme Court	6.6

* Highest possible rating, 7; lowest possible rating, 1.

The average esteem for each court ranged all the way from 1.3 in the case of New Mexico to 6.6 for the United States Supreme Court. It will be observed that the state courts with the highest standing are those in New York, Massachusetts, New Jersey, and Connecticut, in that order. Furthermore, the New York court of appeals not only ranked first in esteem among the state courts, but was substantially ahead of its nearest rival, the Massachusetts supreme court, and was only one-tenth of a point below the United States Supreme Court.

It will be seen that there is a distinct relationship between the average esteem in which a court is held and the number of times it was rated.[10] Those courts which were most frequently rated were, on the whole, the courts which were most highly regarded. It can hardly be considered accidental that more law professors are familiar with the work of the New York and Massachusetts courts than with those of other states. Either the prestige of the court is closely related to the extent to which its opinions are known, or else professors of law charitably follow the injunction to say nothing if they can say nothing good. It may very well be that both of these elements enter into the picture. Certain it is that the remark of Tacitus, "It is common to esteem most what is most unknown," does not apply here.

There is also a significant correlation between the average esteem in which a court is held and the extent to which the opinion of the law professors concerning it was in agreement.[11] In general, there was greater agreement concerning those courts which ranked high in esteem than there was concerning those which ranked low. It would appear that the index of average esteem is more reliable for the courts with high prestige than for those with low. It is possible that the same uncertainty which kept many raters from passing judgment on the courts about which they knew little produced a widespread disagreement of opinion among the more rash raters who presumed to judge the obscure tribunals.

At the same time, it must be remembered that a superior court would naturally rank high in all of the fields of law, and that professors with varying specialties would therefore unite in assigning such a court a high place. On the other hand, a weaker court might well be strong in a few fields of law, and on the basis of decisions in those fields some of the raters might assign it a higher rank than others. There is nothing in the data to indicate that those few who rated the obscure courts were more rash than the larger number who expressed an opinion on the better known courts.[12]

Law School Case-books. Another estimate of the esteem in which the state courts of last resort are held may be obtained by inspecting the case-books which are used in the various law schools. These volumes are important for two reasons: (1) the opinions which are included in them are selected because they appeal to the editors, and therefore they reflect the attitude of leading law teachers toward the courts; (2) the case-books furnish almost the sole study material for law students, and consequently the opinions which are included in them exert an important influence on the next generation of lawyers. The number of opinions from each court which are reprinted in these case-books can be used, accordingly, as a measure of the attitude of a selected group of law teachers toward the court and as a rough index of the influence of the court on legal instruction.

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[10] The coëfficient of correlation between the number of times a court was rated and the average rating of esteem assigned to it by the raters was .72 ±.05.

[11] The coëfficient of correlation between the average esteem of a court and the lack of agreement in the opinion concerning it was .70 ±.05

[12] This observation is supported by the low correlation between the index of agreement and the number of raters who expressed an opinion. See note 9 above.

A case-book is usually prepared by a professor who has made a special study of the particular field of law covered by it, and who is, therefore, especially familiar with its literature. In selecting opinions for inclusion in the case-book, he may take into consideration numerous factors. An effort is generally made to secure a series of problems illustrating the points of law which have arisen in the subject. Preference is frequently given to cases with interesting or unique facts rather than to those of a more prosaic character. Simple cases are often preferred to complicated ones involving several subjects. Some editors seek opinions which summarize the law in a succinct fashion, which contain vigorous dissenting opinions, or which discuss problems recently presented to the courts. If these were all of the considerations which were taken into account in compiling a case-book, the number of cases from each state should be roughly in proportion to the volume of opinions prepared by the court of last resort. Thus the number of opinions by the supreme court of the state of Washington which could qualify should be about the same as the number of opinions by the New York court of appeals.

It was found, however, that the distribution of opinions in the case-books bore little or no relation to the volume of litigation in the state courts of last resort. There were naturally only a few opinions from Delaware, where there is very little litigation in the highest court, or from Louisiana, where a different system of law prevails. But the difference in the extent to which other courts were drawn on for case material indicates that the editors of the case-books were influenced by still other factors in considering cases for inclusion.

An opinion which is cogently written is better instructional material than one which is poorly prepared. A vigorous discussion of even an uninteresting case may make better case-book material than a dull discussion of an exciting one.[13] Furthermore, an editor's view concerning the correctness of the decision undoubtedly entered into consideration. Some editors have a reputation for including cases which they believe to be clearly wrong in order to develop the critical faculties of the student. But, in general, the opinions included in the case-books may be presumed to represent the weight of authority on the particular point decided. Thus the number of cases from each jurisdiction should bear some relation to the attitude of the editors toward the court in that state, with respect either to the correctness of its decisions or to the cogency of its discussion of the points involved.

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[13] "Cases are great by what we make of them." Benjamin Cardozo, *Law and Literature* (New York, 1931), p. 39.

In any event, it is clear that those courts which are drawn on most frequently for opinions in the case-books are more likely to influence the legal thinking of the next generation of lawyers than those which are ignored. Whatever other functions a court of last resort may have, two are certainly of prime importance: the development of the law of the state; and the instruction of the legal profession in the law as developed. If the opinions which a court renders are not good instructional material, it is clearly missing one of its most important sources of influence.

An analysis was made, accordingly, of practically all of the case-books widely used in American law schools. These fifty-nine case-books embraced sixty-one volumes and covered all of the more commonly studied law school subjects, and most of the others. Only books published since 1915 were included, and in the list there are a considerable number which have been prepared for the newer types of law courses now being developed in some schools. It is believed that this list was a fair sample of the case-books most widely used in law schools.[14]

The number of times each court had an opinion reprinted in these books is shown in Table V. It will be observed that the New York court of appeals and the supreme judicial court of Massachusetts were much more frequently drawn on for case material than were any of the other courts of last resort. Almost a quarter of all the opinions included in the case-books now used in our law schools were handed down in one of these two courts. Only three other courts—those of New Jersey, Illinois, and Minnesota— furnished more than 250 cases each for these volumes, while nearly two-thirds of the states furnished less than 100 opinions each.

A comparison between the number of cases from each state which were included in the various case-books and the average esteem reported by the law professors shows that there is a distinct relationship between these two indexes.[15] The same three courts head each of the lists, and in the same order.

It is interesting to note, likewise, that there is an even closer correlation

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[14] In order to ascertain whether the inclusion of additional volumes in the list would materially affect the result, the data were tested for reliability. The case-books were divided into two groups, similar volumes from each subject being placed in each group, and the number of cases listed for each of the states in both groups was found to be substantially the same. The coëfficient of correlation between the number of cases from each state in the first group of case-books and those in the second group of case-books was very high, i.e., .95 ± .01. Clearly, the inclusion of additional volumes would not materially affect the position of the various courts.

[15] The coëfficient of correlation between the average esteem in which the court was held and the number of times its opinions were reprinted in the case-books was 70 ± .05.

TABLE V

OPINIONS REPRINTED IN LAW SCHOOL CASE-BOOKS

State	*Opinions Reprinted*	*State*	*Opinions Reprinted*
Alabama	120	Nebraska	74
Arizona	21	Nevada	6
Arkansas	66	New Hampshire	81
California	148	New Jersey	259
Colorado	62	New Mexico	14
Connecticut	181	New York	747
Delaware	43	North Carolina	141
Florida	28	North Dakota	38
Georgia	91	Ohio	79
Idaho	26	Oklahoma	114
Illinois	256	Oregon	83
Indiana	53	Pennsylvania	178
Iowa	173	Rhode Island	68
Kansas	180	South Carolina	51
Kentucky	132	South Dakota	42
Louisiana	21	Tennessee	66
Maine	91	Texas	57
Maryland	66	Utah	32
Massachusetts	572	Vermont	88
Michigan	151	Virginia	52
Minnesota	255	Washington	143
Mississippi	49	West Virginia	94
Missouri	87	Wisconsin	193
Montana	42	Wyoming	12
		TOTAL	5626

between the number of cases cited in case-books and the number of raters who were willing to express an opinion of the court on the rating form.[16] Perhaps law professors draw their impressions of the standing of a court, in part at least, from the frequency with which the opinions of that court are found in the case-books they teach. Certainly there is a distinct increment of prestige to any tribunal of last resort whose opinions are frequently used in the classroom.[17]

[16] The coëfficient of correlation between the number of times the opinions of each court were reprinted in the case-books and the number of ratings returned for each court on the rating forms was .86 ± .03.

[17] It was found that there was little relationship between the number of opinions found in the case-books and the extent to which opinion regarding the standing of the court was in agreement. The coëfficient of correlation between the index of disagreement and the number of opinions reprinted was $-.37 \pm .08$.

No index of agreement among the compilers of the case-books was constructed. An inspection of the data, however, showed that certain courts seemed to have developed higher standing in some subjects than in others. This may have been due to local conditions, or to the special interests of certain judges. Examples toward

Esteem by Other Courts. The opinion of other tribunals concerning the esteem of a court of last resort is in some respects more important than the opinion of either law teachers or the editors of case-books. A court's fellow-judges are directly in contact with the problems which an appellate tribunal must face. In deciding cases, the judges frequently consult, compare, and choose between the opinions of the courts of other states. There is probably no body of persons better qualified to estimate the work of the various courts than the members of those courts themselves. Furthermore, the extent to which the decisions of a court are followed by its fellows is more than a mark of its prestige; it is evidence of its influence on the general development of the law in the United States. A court whose views are highly regarded in other jurisdictions is in an enviable position of leadership.

It was obviously impracticable to secure a direct expression of the views of judges regarding one another. Accordingly, it was found necessary to turn to indirect indexes. Three such were constructed: (1) the number of times each court was cited in the opinions of the courts of other states; (2) the number of times each state court was cited in the opinions of the United States Supreme Court; (3) the number of times each state court was cited *with approval* in the opinions of the United States Supreme Court.

The index based upon the frequency of citation by other state courts was taken from material compiled by the West Publishing Company in 1911 and in 1922. The first tabulation covered the five volumes of reports issued immediately before 1910 in each of the states. The number of times each of 28 courts was cited was counted, there being 45,647 citations in all.[18] The tabulation made in 1922 was more comprehensive, covering all of the decisions in all of the states rendered between January, 1919, and October, 1921. A total of 67,924 citations were included in this second tabulation.[19] In both tabulations, all of the cases cited—regardless of when they were decided—were included.

Table VI gives the number of times each state court was cited in each of these tabulations, together with the total number of citations for each court. It will be observed that there is a very close relationship between the number of times a court was cited before 1910 and the number of times

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judicial specialization may be observed in the frequent use of opinions of the Illinois supreme court in future interests cases, of the New Jersey court of chancery in equity cases, of the California supreme court in cases involving water rights, of the Oklahoma supreme court in oil cases, and of the Pennsylvania supreme court in cases involving damages.

[18] *The Docket* (West Publishing Co., St. Paul), January, 1912, p. 642. Additional information concerning Virginia and West Virginia was available in *The Docket*, April to May, 1910, p. 237.

[19] *The Docket*, September to October, 1922. (Vol. III, No. 16, pp. 2523–24).

TABLE VI

CITATION TO OPINIONS BY OTHER STATE COURTS

State	*Before 1910**	*1919–1921*	*Total**
Alabama	1412	1649	3061
Arizona	*48*	95	*143*
Arkansas	191	1015	1206
California	3486	3713	7199
Colorado	316	786	1102
Connecticut	355	1148	1503
Delaware	*67*	134	*201*
Florida	*185*	371	*556*
Georgia	463	1583	2046
Idaho	*148*	297	*445*
Illinois	4018	3995	8013
Indiana	2641	2559	5200
Iowa	2025	2523	4548
Kansas	1108	1855	2963
Kentucky	374	1940	2314
Louisiana	*326*	653	*979*
Maine	431	1020	1451
Maryland	259	1091	1350
Massachusetts	5054	5256	10310
Michigan	2118	2578	4696
Minnesota	1425	2155	3580
Mississippi	197	739	936
Missouri	2334	2809	5143
Montana	*207*	415	*622*
Nebraska	656	1401	2057
Nevada	*98*	197	*295*
New Hampshire	325	814	1139
New Jersey	951	2332	3283
New Mexico	*57*	115	*172*
New York	8339	4222	12561
North Carolina	380	1270	1650
North Dakota	*238*	476	*714*
Ohio	1460	1096	2556
Oklahoma	*396*	792	*1188*
Oregon	*404*	808	*1212*
Pennsylvania	2175	2642	4817
Rhode Island	*225*	451	*676*
South Carolina	*276*	552	*828*
South Dakota	*178*	356	*534*
Tennessee	*493*	986	*1479*
Texas	1093	1895	2988
Utah	*202*	404	*606*
Vermont	*382*	764	*1146*
Virginia	*947*	1161	*2108*
Washington	212	1482	1694
West Virginia	*475*	883	*1358*
Wisconsin	1849	2294	4143
Wyoming	*76*	152	*228*

* Figures in italics are estimates. See note 22 below.

it was cited between 1919 and 1921.[20] This close relationship between the numbers in the two periods showed that judicial attitudes toward other courts changed slowly, and that, accordingly, further sampling of the citations would be unnecessary.[21] Furthermore, it made possible a reliable estimate of the number of citations of the 20 courts omitted in the 1910 tabulation, and thus a composite index of the frequency of citation by other courts could be computed.[22] This index is given in the last column of Table VI.

The 118,999 citation estimates, as distributed over the 48 courts of last resort in the states, undoubtedly represent a fair sampling of the extent to which the courts have referred to the decisions of each of their fellows during the past 30 years. These references, of course, include citations with disapproval, citations in dissenting opinions, and citations for illustrative purposes, as well as citations with approval. Some courts are much more prone to cite cases from other states than are other courts. For example, the courts in North Dakota, West Virginia, Iowa, Tennessee, and Oklahoma cite more than twice as many decisions of other courts as do their neighbors in Missouri, Montana, Virginia, and Kentucky, and nearly ten times as many cases from other states as do the courts in Pennsylvania, New York, Mississippi, and Arkansas.[23] The index based on the frequency of citation by other state courts, therefore, does not give equal weight to the opinions of all the judges, or even of all the courts. In spite of these limitations, however, such a large sampling gives a significant cross-section of judicial attitudes toward the various courts. It was found that there was a relation between the frequency of citation and the esteem in which the professors of law held the courts.[24]

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[20] The coëfficient of correlation between the number of times a state was cited before 1910 and the number of times it was cited in 1919–1921 was .88 ± .03 (28 states).

[21] An effort was made to secure a more recent table of citations than that published in 1922. It seems, however, that none has been compiled, although it is reported that the West Publishing Company has, from time to time, checked the citations in isolated volumes of the state reports to detect any change in the trend shown by the 1922 count. No substantial change was found. This same fact was ascertained independently by a check of the citations in one state—Connecticut. The volumes of the Connecticut *Reports* contain a list of the cases cited in them, and tables were made from these lists showing the number of states cited in these reports between 1900 and 1910 and also the number cited between 1923 and 1929. The correlation between the citations in these two periods was found to be very high, the coëfficient of correlation being .98 ± .004 (47 states). The high standing of the Connecticut supreme court makes this result all the more significant.

[22] A table was made of the states in the 1922 compilation which had been cited fewer than 1,200 times. It was found that seven of these states were also reported in the 1910 table. The average number of citations reported for these seven states in 1910 was one-half of the number reported in 1920. Accordingly, the number of citations for the states not listed in 1900 was estimated at one-half of the 1922 figure. This estimate was included in the total.

[23] *The Docket*, April–May, 1910, pp. 233–237, contains data on the number of times certain courts cited courts in other states.

This index based on citations by other state courts was compared with an index constructed from a tabulation of the citations in the United States Supreme Court *Reports* for the years 1900, 1915, and 1929. This tabulation included all of the cases cited in majority, dissenting, and concurring opinions, whether the case was cited with approval, disapproval, or for illustration. The number of times each state was cited is given in Table VII. It will be found that there is a very close relationship between the number of times a court was cited by other courts and the number of times the United States Supreme Court referred to its decisions.[25]

These data showing the frequency of citation also throw light on the reasons why some law professors decline to rate certain courts. It will be noted that there is an unusually high correlation between the number of citations for each court and the number of raters who expressed an opinion concerning it.[26] Familiarity with the work of a court, either through the study of its opinions in case-books or through finding citations to its decisions in opinions of other courts, made the raters more willing to give their view of its standing. Publicity has a prestige value even for judicial tribunals.

The tables of citations thus far considered have included all of the cases referred to by other courts. Many of these cases were, of course, in direct opposition to the view of the court citing them and were listed as examples of how the court should not decide. It would be a strange court, however, which over a period of years would cite more cases it did not like than cases of which it approved. Undoubtedly the great majority of citations are included in an opinion because the court agrees with the rule of law or dictum which has been expressed.

In order to ascertain the validity of this hypothesis, a second tabulation was made from the decisions of the United States Supreme Court. This tabulation included only those cases which were cited as supporting a proposition approved by the Court in a majority opinion. Furthermore, special care was taken to prevent the weighting of the tabulation by

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[24] The coëfficient of correlation between the average esteem in which a court was held and the number of times it was cited by other courts was .65 ± .06. A higher correlation was found between the total citations by other state courts and the number of opinions quoted in the case-books, the coëfficient being .89 ± .02.

[25] The coëfficient of correlation between the frequency of citation by other state courts and the frequency of citation by the United States Supreme Court was .91 ± .02.

[26] The coëfficient of correlation between the frequency of citation and the number of ratings returned on each court was .95 ± .01.

Table VII

CITATION TO OPINIONS BY UNITED STATES SUPREME COURT

State	*All Citations During 1900, 1915, 1929*	*Cited with Approval 1921–1930*
Alabama	18	10
Arizona	1	2
Arkansas	32	14
California	51	29
Colorado	7	11
Connecticut	24	15
Delaware	7	3
Florida	8	4
Georgia	61	13
Idaho	3	3
Illinois	85	56
Indiana	31	14
Iowa	32	23
Kansas	45	23
Kentucky	30	17
Louisiana	21	11
Maine	16	14
Maryland	16	10
Massachusetts	152	87
Michigan	54	25
Minnesota	69	35
Mississippi	15	13
Missouri	63	17
Montana	6	8
Nebraska	19	11
Nevada	1	2
New Hampshire	13	9
New Jersey	33	52
New Mexico	1	1
New York	252	73
North Carolina	37	17
North Dakota	4	9
Ohio	49	15
Oklahoma	59	15
Oregon	9	6
Pennsylvania	57	23
Rhode Island	4	24
South Carolina	10	10
South Dakota	5	6
Tennessee	15	13
Texas	28	4
Utah	1	8
Vermont	15	25
Virginia	13	8
Washington	40	26
West Virginia	8	15
Wisconsin	31	31
Wyoming	2	4

chance factors. It was found that, in those cases which were appealed from a state supreme court, the United States tribunal preferred to cite cases in the state from which the case came in support of its position. In other words, when possible, it attempted to prove the falsity of the state court's position by referring to its own previous pronouncements. To have included these cases in the tabulation would have weighted the count strongly in favor of the courts from which the largest number of cases were appealed. For this reason, these citations were omitted.

The tabulation included cases cited in the opinions of the United States Supreme Court which were rendered between 1920 and 1929, provided the decision of the state court thus cited had been rendered since 1900. Thus, the tabulation represents the number of times the highest federal tribunal expressed approval of a decision of each state court made during the period under consideration by this study. The 864 citations in this tabulation probably represent a much more accurate index of the standing of the various state courts during the first three decades of the present century than does the table of total citations by other state courts.[27]

The number of cases from each state which were cited with approval by the United States Supreme Court will be found in the last column of Table VII. It will be observed that there is a very close relationship between the number of cases cited with approval and the gross number of cases cited by the court.[28] This would indicate either that a large proportion of cases cited by the courts are approved by them or else that the proportion of cases cited with approval to the total number cited is constant for all the states. Furthermore, it will be observed that there is a close relationship between the total number of citations in state courts and the number of citations approved by the United States Supreme Court.[29]

It seems fair to assume that the opinion of the United States Supreme Court concerning the state tribunals is more important than that of the state courts themselves, but when these two indexes compare closely, it must be concluded that ratings given in them have a high degree of reliability. And when the opinion of the United States Supreme Court agrees closely with that of law professors in the principal law schools[30]—and with that of the editors of the case-books[31]—it is clear that there is a general consensus of opinion among those in a position to judge the standing of the state supreme courts.[32]

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[27] It is true that only a small proportion of the cases appealed to the state supreme court are again appealed to the United States Supreme Court, and that these appeals involve only limited classes of cases. Nevertheless, the count covered appeals from lower federal courts as well as from the state courts, and although not all the fields of law were covered in the same proportion as they are covered by state court cases, the decisions of the United States Supreme Court cover a wide territory.

[28] The coëfficient of correlation between the gross number of cases cited by the United States Supreme Court and the number of cases cited with approval was .83 ± .03.

[29] The coëfficient of correlation between the cases cited with approval by the United States Supreme Court and the cases cited by other state courts was .88 ± .02

It has been shown that these various indexes of judicial standing and influence all bear a distinct relationship to each other. No one of them can be conceived of as a perfect criterion of judicial prestige. In each case, outside factors, chance considerations, and possible inaccuracies may have crept in to cast doubt on the validity of the index. It is very significant, however, that a high degree of relationship exists between any two of them. It is clear, moreover, that the standing of the court is an important factor in each of them.

There is a possibility that some common factor besides the prestige of the court, common to each of these indexes, might account for the high correlation between them. It will be observed that the older, more populous, and wealthy states tend to rank higher than their newer, poorer, more rural sisters. As an eastern professor shrewdly wrote on his rating form, "Some courts may be noteworthy because they necessarily deal with great problems; others are obscure, largely for geographical reasons." The factors producing a court with a high prestige might well be analyzed. But whatever those factors may be, a court's prestige as an index of its standing would still be significant. An opinion from a court of high prestige may be no better law than an opinion from one of low esteem, but it certainly has a better chance of being accepted as authoritative.

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[30] The coëfficient of correlation between the cases cited with approval by the United States Supreme Court and the average estimate of esteem by law professors was .71 ±.05.

[31] The coëfficient of correlation between the cases cited with approval by the United States Supreme Court and the number of opinions quoted in case-books was .92 ±.02.

[32] An attempt also was made to secure an index of the opinion of the courts held by various publishers of law-books. It was found, however, that no reliable gauge of their attitudes could be secured. The only feasible index of opinion of this group appeared to be the number of cases from each state selected for inclusion in the two series of reports, *Lawyers' Reports Annotated* and *American Law Reports*. A comparison of the index constructed from this data with the other gauges of prestige, however, disclosed that the relation between them, although perhaps somewhat significant, was not close. This is probably due to the variety of considerations which the editors of these series have in mind in selecting cases for inclusion in them, such as the importance of the decision, the uniqueness of the facts, or the popularity of the series among the lawyers of the state. It may be noted that the coëfficient of correlation between the number of cases from each state included in LRA and ALR and the index of esteem of the law professors was .44 ±.08. A considerably higher correlation was found between the cases in LRA and ALR and the total number of citations of state courts by each other ($r = .71 \pm .05$). This indicates, perhaps, that these series of volumes have more influence with judges than with law faculties. The coëfficients of correlation between the cases included in LRA and ALR and the other indices of prestige developed in this paper ranged between the two figures just given.

A study of the tables will show, moreover, that some states rank surprisingly high in view of their small populations and wealth, while other courts which might be expected to be near the top of the list rate below them. These deviations from the expected order are perhaps more significant than the ratings themselves.

TABLE VIII

COMBINED PRESTIGE RATING IN ORDER OF RANK

State	*Prestige Rating*	*State*	*Prestige Rating*
New York	25.18	West Virginia	6.30
Massachusetts	23.09	Nebraska	6.08
Illinois	15.77	Texas	6.04
New Jersey	14.08	Virginia	6.04
California	12.26	Georgia	5.85
Pennsylvania	11.79	Colorado	5.78
Michigan	11.75	Oregon	5.48
Minnesota	11.59	Tennessee	5.45
Wisconsin	11.44	Oklahoma	5.35
Iowa	9.87	Louisiana	4.58
Kansas	9.32	Delaware	4.52
Connecticut	9.23	South Carolina	4.43
Ohio	8.89	North Dakota	4.39
Missouri	8.64	Mississippi	4.36
Indiana	8.17	Montana	4.32
North Carolina	7.98	Arkansas	4.28
Vermont	7.90	Utah	3.96
Washington	7.81	South Dakota	3.43
Maine	7.35	Idaho	3.33
Alabama	7.12	Wyoming	3.32
Kentucky	7.01	Florida	3.27
Rhode Island	6.99	Nevada	2.94
New Hampshire	6.85	Arizona	2.58
Maryland	6.77	New Mexico	2.12

Combined Prestige Rating. If the prestige of the court is an important element in each of these indexes, it should be feasible to combine them into a composite index. In such a combination, the chance elements of one index might tend to neutralize the chance elements in another, and hence the resulting index would be more reliable than any of the single ones. Accordingly, a composite table has been constructed using the following factors: (1) the esteem in which the law professors held the courts; (2) the extent to which opinions from each court were used in law school case-books; (3) the number of prestige ratings given each court; (4) the number of citations of opinions of the court by other state courts; (5) the number of cases cited with approval by the United States Supreme Court.[33]

This composite rating of prestige is given in Table VIII. A comparison of these composite ratings of prestige with the composite rating of personnel of the courts which was prepared in another connection shows that there is a fair degree of relationship between the prestige of a court of last resort and the personnel of the court.[34] This is, of course, what would be expected, and the fact that it is shown by the data tends to strengthen the presumption of the validity of each index.

A study of the relation between the standing of a state's tribunal and its position in other respects may disclose important conditions which will promote or decrease the influence of a court of last resort. Will a higher salary, longer term, broader jurisdiction, or a more professional bar enhance the standing of the judiciary? Or is it dependent upon such uncontrollable factors as the antiquity of the tribunal, the natural resources of the state, the wealth of its inhabitants, or the development of its industries? The use of an index like that developed in this study would assist materially in discovering the correct answers to such problems as these.

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The Selection of Judges in Chicago, and the Rôle of the Local Bar Therein. For many years, the organized Bar has sought to guide the process of judicial selection. Its greatest activity has been in metropolitan communities where the choice is nominally by vote of the people. Such participation by a quasi-public group in a democratic procedure raises several pertinent questions. For example, what effect will it probably have on methods of selection now in force? Is such activity likely to become an accepted feature of our political life? Is such participation to be regarded as in the public interest? Is it a specific corrective that the body politic has developed to counterbalance too much democracy in judicial selection?

To shed some light on these and related questions, the writer (as a graduate student at the University of Chicago) made a study of judicial selection in Chicago from 1870 to 1933, particular attention being given to the rôle of the Chicago Bar Association in the process.[1]

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[33] These various factors were reduced to an equal weight in the construction of the composite rating by dividing the index for each state by the standard deviation of all the states for that index.

[34] The coëfficient of correlation between the composite personnel index and the composite index of prestige was .53 ±.08 (32 cases). The composite personnel index is given in the article entitled "Judicial Personnel," *Annals of the American Academy of Political and Social Science*, May, 1933, pp. 143–155.

Chicago's Problem of Judicial Selection. The number of offices to be filled, the multiplicity of elections, the extent and heterogeneity of the electorate, and a supreme degree of partisan control combine to render the selection of the judiciary unusually complex in Chicago. The average voter ballots for 88 judicial officers, 85 of whom have six-year terms. The voters also nominate candidates for 39 of these offices in party primaries.[2] Furthermore, most of the vacancies are filled by election. These judges are chosen in seven different groups. In addition, 77 other public officers are nominated and elected by ballot. The voters are called upon also to approve bond issues and questions of public policy. The cumulative burden which results appears in the fact that in a specimen six-year cycle Chicago voters were called upon to choose between 997 Republican and 787 Democratic candidates, and to vote upon 124 bond issues and 34 public policy propositions. During this period, 423 candidates sought election to 146 judicial offices in 15 different contests.

The Chicago electorate comprises upwards of 1,500,000 voters, more than 82 per cent of whom are of first or second generation foreign extraction. There are at least 17 distinct nationalistic voting blocs and, in addition, well defined racial and religious cleavages.

The chief factor, however, is the scope and extent of partisan political control of all elective processes, including the selection of the judiciary. From earliest days, the two-party tradition has been firmly established in Chicago. Working under this favorable circumstance, organizations representing the two leading parties have developed practically complete control over every phase of every elective process. In the case of the judiciary, this control is exercised both in the nomination of candidates and in the election of nominees supported by the organization. Judicial nominations are made both in party conventions and in party primaries. The political organizations control both. In the case of judicial offices for which nominations are made in conventions, the dominant organizations in each party have assured complete control by uniting upon a single coalition ticket. Normally, the combined voting strength of the two groups has been sufficient to overwhelm all opposition.

The Rôle of the Bar. In attempting to guide the selection of judges, the

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[1] Under the title of *The Rôle of the Bar in Electing the Bench in Chicago,* this study is soon to be published by the University of Chicago Press.

[2] The judges of the county and probate courts of Cook county and of the Municipal Court of Chicago are nominated in general party primaries in April and are elected in the general elections in November. The judges of the circuit and superior courts of Cook county and the judge of the Illinois supreme court from the district which includes Chicago are nominated in party conventions, and are elected in June at elections separate from the general elections.

Chicago Bar Association[3] occupies an anomalous position. It is a private, non-partisan, professional organization, while nevertheless seeking to influence a political process. Unlike the party organizations, it does not normally participate directly in the selective process as established by law. To be sure, the Association can enter into direct competition with the party organizations by qualifying as an independent party and nominating its own slate of candidates. It, however, has attempted such a rôle only once. For the most part, it has acted as an impartial appraiser of the qualifications of candidates and as adviser to the electorate. The Association's sole means of being effective are either to urge the party leaders to nominate well-qualified candidates or, failing that, to induce the electors to vote for the least unfit candidates. The extent of its influence depends, of course, upon the prestige of its members, individually and collectively, upon the fairness of its recommendations, and upon the degree of coöperation accorded by the community. Needless to say, the rôle of detached non-partisan appraiser-adviser becomes a limited factor in an atmosphere of partisan combat, for appeals to pride and prejudice are more relied upon than emphasis upon abstract fitness to win votes.

Types of Bar Activity. Over the years, the Chicago Bar Association has tried various tactics. It has worked for the reëlection of incumbents in both parties who have given satisfactory service. It has fostered independent, or third party, "citizens' tickets" when nominees of the two leading parties have been unsatisfactory. It has sought the coöperation of civic agencies in focusing attention on judicial campaigns. It has allied itself with political organizations. On one occasion, it nominated a "Bar Association" ticket and campaigned unsuccessfully against the combined strength of two party organizations. In the great majority of contests, however, the Association's activities have been confined to endorsing a list of qualified candidates and giving widespread publicity to these endorsements. The method of determining the endorsements has grown more complex as the number of candidates has increased. But in every instance since 1887 the final list of endorsements has represented the composite opinion of the Association's membership as registered in a formal plebiscite or "Bar primary." The number of endorsements is limited to the number of nominations to be made or offices to be filled. Ordinarily, the candidates standing the highest on the list are endorsed, but to be endorsed a candidate must have polled at least one-third of the votes cast.[4] To cope with the increased number of candidates resulting from the creation of the Municipal Court of Chicago in 1906, a printed circular presenting the report of a "committee on candidates" was added to the simple ballot previously employed. This printed report contains a *pro forma* statement of each candidate's training and experience, together with his campaign photograph; it also gives the committee's estimate of his fitness to be a judge. As the Association's membership increased, this report became an indispensable adjunct of the Bar primary plan.

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[3] The Chicago Bar Association is the principal group among the local legal profession. Its membership includes approximately 44 per cent of the local Bar, and is even more representative when account is taken of the large number of duly licensed attorneys who are not active practitioners.

[4] On the average, 60 per cent of the Association's membership vote in the Bar primaries. This ratio compares favorably with similar participation in Cleveland, Detroit, and Los Angeles.

The plan of the Bar primary in Chicago has been consistently improved, and in technique it now compares favorably with similar procedures in Cleveland, Detroit, and Los Angeles. But obviously it is merely a mechanical means to an end and can only differentiate the material to which it is applied. It does not draft candidates, nor can it improve the fitness of those who seek judicial office. The criticism has been made, not unjustly, that through this system of voting the Bar Association has allowed itself to be euchred into supporting unfit nominees.

The Influence of the Bar. Since 1887, Chicago has had approximately 100 contests for judicial office. The success of Bar-endorsed candidates is indicated in Table I. The index of influence ranges from 40 to 91 per cent for specific courts, and the general average is 71 per cent.

TABLE I

INFLUENCE OF THE CHICAGO BAR ASSOCIATION IN TERMS OF THE NUMBER OF CANDIDATES ENDORSED BY IT WHO WERE ELECTED TO OFFICE IN THE PERIOD 1887–1933

Court	*Total Number of Elections*	*Total Number of Offices*	*Candidates Elected Who Had Been Endorsed by the Bar Association*	
			Number	*Per Cent*
Circuit	23	159	128	80.5
Superior	28	127	93	73.2
County	10	10	4	40.0
Probate	11	11	10	91.0
Municipal	28	176	106	60.2
Total	100	483	341	70.6

In nominating primaries, the Association has been less successful, as is indicated by Table II.

Another indication of Bar Association influence, or lack of it, appears in the success of individual candidates definitely opposed by the Association. During the past twenty years, there have been 16 persons whose elevation to the bench the Association has consistently advised against. These men have run for judicial office a total of 67 times. In spite, however, of the Association's assertions of their unfitness, there have been only 14 defeats in the entire list. Some of these defeats occurred in party primaries. Others were due to political landslides in which the Association's opposition was a small factor. Some of the most successful candidates opposed by the Association have been judges, who, after many years of incumbency, were flatly declared to be unfit for the bench.

TABLE II

INFLUENCE OF THE CHICAGO BAR ASSOCIATION IN PRIMARY ELECTIONS IN THE PERIOD 1910–1932

Court	*Number of Elections*	*Number of Candidates Nominated*	*Number of Candidates Seeking Nomination*		*Candidates Nominated Who Were Endorsed by the Bar*			
					Republican		*Democratic*	
			Republican	*Democratic*	*Number*	*Per cent*	*Number*	*Per cent*
County	6	6	13	14	3	50	4	67
Probate	6	6	16	14	3	50	6	100
Municipal (all)	27	147	432	365	84	57	91	62
Municipal (assoc. justices vacancies)	10	16	48	29	4	25	5	31
Total	39	159	461	393	90	57	101	64

Another indication of Bar influence appears in an analysis of votes cast for candidates who had been endorsed by the Bar, as compared with those denied such endorsement. In making these comparisons, the factors of party support and incumbency were neutralized. It appears that the total number of voters influenced by the Bar has ranged from as high as 30 per cent to as low as 0.2 per cent. The important fact, however, is that a considerable number of voters in each election apparently heed the recommendations of the Bar Association. The difficulty is that the number is usually too small to overcome the advantages of party plurality or bi-partisan support. The existence of this "Bar bloc" is shown by the fact that when candidates are ranked according to their standing in the election returns, those that are endorsed rise to the top of each political party group. It is a fact that in the case of the Municipal Court no unendorsed candidate has led the winning slate for the past twenty-five years.

Bar influence also varies with the character of the voting constituencies. Several contests were analyzed by voting subdivisions. Certain areas, in which the party organizations wield great power, tend to vote for those candidates not endorsed by the Association. At the opposite extreme, there are large areas, primarily residential, that invariably, and under even adverse political circumstances, return large majorities for the candidates endorsed by the Bar Association. In one contest, for example, the precinct in which the University of Chicago is located gave a four to one vote for Bar-endorsed candidates over those not so endorsed, as against an even vote in a Negro precinct in the same ward predominantly Republican in politics.

Factors that Affect the Influence of the Bar. Four factors appear to affect the influence of the Bar, viz.: (1) Chicago's "long ballot," (2) the press, (3) the attitude of the voter, (4) partisan politics.

An analysis of votes cast for general and judicial offices revealed a characteristic index of participation for each type of judicial contest and a characteristic discrepancy between the percentage of votes cast for general offices and for judicial offices polled in the same election. This disparity ranged from six to eight per cent in the case of offices appearing on the *main* ballot in general elections to more than 20 per cent for judicial offices listed on *separate* ballots in general elections. The discrepancy appears even in elections where the judicial contest is the sole issue at stake. It ranged from five to eight per cent when the total number of registered electors voting was below 50 per cent. In one vacancy contest for a higher court, the discrepancy was four per cent, with a total of only 26.6 per cent of the total vote polled. Chicago voters appear to have rebelled under the cumulative burden placed upon them by the "long ballot."

The press is perhaps the Bar Association's greatest ally. The news columns provide the quickest and least expensive means of reaching the voters. In Chicago, five metropolitan daily papers are supplemented by 55 weekly neighborhood publications and by some 27 foreign language papers which circulate among the city's 17 or more major nationalistic and politically-conscious groups. Two metropolitan daily papers have made a practice of issuing endorsements. In the case of one paper, 97 per cent of its recommendations in 12 contests were identical with those issued by the Bar Association. The endorsements of the other, in 11 contests, were identical in 93 per cent of the cases. The editorial attitude of both of these papers is that the Association's Bar primary plan is a step in the right direction, but that fundamental changes in the existing system of selection are essential before any much-to-be-desired improvements can be achieved.

Two other daily papers, which operate under one ownership, spasmodically issue recommendations and show a less degree of concurrence —70 per cent and 84 per cent in four elections. Their attitude has varied according to successive editorial régimes, and has ranged from approval of the Bar Association's efforts to the criticism that its recommendations are dictated by an inner clique. All of the daily papers print the Association's recommendations as news. Only under special circumstances, however, have individual publications crusaded for the Bar's endorsees throughout judicial campaigns.

The foreign language press provides a quick avenue to politically powerful groups, and one which is used extensively by the party organizations. On occasion, the Bar Association has inserted paid advertising in this press. A canvass of the news columns and interviews with editors, however, revealed attitudes ranging from nationalistic antipathy to acknowledgment of value in the Bar's recommendations, while nevertheless ignoring them for the sake of expediency on account of advertising and political connections. The same was true in somewhat lesser degree of the neighborhood weeklies.

On paper, the Bar Association has a powerful ally in the independent vote, estimated variously from 500,000 to 680,000 persons and constituting approximately one-third to one-half of the registered electorate. Analyses have shown that from 15,000 to 20,000 extra votes in "close" elections, and 200,000 votes in most "landslide" years, would have been sufficient to carry the Bar endorsees to victory. Since the Bar Association's appeal is non-partisan and is aimed mainly at the independents, an effort was made to ascertain the attitude of selected groups of citizens toward the Association and its attempts to guide judicial selection.

A questionnaire was sent to 1,750 presidents and secretaries of civic organizations located throughout the city. These persons were invited to indicate their various sources of information concerning candidates, and were also asked the direct questions: Do you now follow the recommendations of the Bar Association? Would you do so if you had the information? Out of 418 questionnaires returned, 69 per cent gave a favorable reply, 26 per cent were definitely unfavorable, and five per cent failed to answer the inquiry about following the Bar Association's endorsements. That so large a group of citizens associated with "civic" organizations should be thus critical of the Bar Association strikingly evinces a widespread distrust of the legal profession and its alleged designs to influence judicial selection.

During four judicial campaigns, the writer was associated with an effort made to enlist the coöperation of Chicago civic agencies in endorsing and distributing the recommendations of the Bar Association. This attempt failed to arouse more than a passing interest, and in many quarters was either side-stepped or bluntly declined. The most frequent excuse was that "political" issues were taboo. Non-coöperation extended even to the members of a prominent law school faculty, who decided not to act (although another group had done so) because some of the members personally admired a candidate whom the Bar Association had denounced as unfit.

Under the bipartisan system of elections which has dominated Chicago for many decades, the agencies of the leading political parties have obtained an entrenched position in the selection of all elective officers, including the judiciary. This control extends to the sponsorship of candidates, control of party primaries and party conventions, and, in the large majority of elections, to the fate of the candidates at the polls. The party organizations assess the candidates, conduct their campaigns, and, if necessary, manipulate the results of the polls. This control forces the judicial candidates into a relationship of acquiescence and obeisance which profoundly affects the judicial independence and impartiality of the successful candidates. During their tenure of office, this control extends to dictation in appointments, such as masters-in-chancery, receivers, etc., and allegedly is a factor in the actual administration of civil and criminal justice.

Under Chicago's system of short-term tenure and partisan elections, an individual judge, in effect, becomes a cog in the dominant partisan machine. Obviously, the far-reaching effects of such control constitute the greatest barrier to the success of the efforts of the Bar Association to influence judicial selection.

A Suggested Plan. All of Chicago's tribunals, excepting the Municipal Court, are constitutional bodies. Changes in selecting their judges can come only by the practically impossible (in Illinois) method of constitutional change. The writer suggests therefore that statutory authorization be sought to adopt a four-point plan for the Municipal Court. If successful, the plan could be extended to an inclusive metropolitan court system, if and when created. The Municipal Court now has a chief justice and 36 associate justices, the latter elected biennially in rotation in groups of 12. All have six-year terms. The chief justice has broad powers of supervision and can effectively act as general manager of the tribunal, without, however, any disciplinary authority over his colleagues.

The suggested plan, in brief, is: (1) Elect a chief justice for a six-year term at a special judicial election. (2) Empower the chief justice to appoint the associate justices of the court and continue his present supervisory authority. (3) Provide that the chief justice shall appoint the associates only from a list of eligibles provided by a commission on judicial nominees elected by the members of the Bar practicing in Chicago. (4) Provide that the associate judges shall hold office for an indeterminate period, subject to any one of the following provisions for removal: (a) By retirement upon an adverse vote of the people. At six-year intervals the question would be voted upon: Shall Judge —— be continued in office? (b) By removal from office by a majority decision of the Illinois supreme court. Several states empower their highest tribunals to do this. It is a logical extension of the disbarment power now exercised by the court. (c) By legislative recall, as at present. This provision has been utterly ineffective, for in the state's entire history no judge has ever been recalled. (d) By compulsory retirement at the age of 70, after service aggregating 24 years, with an annuity for life of one-half of the last year's annual salary. The present statute provides for voluntary retirement at the age of 65.

This plan is an elaboration of one first proposed by the American Judicature Society in 1913. All of the parts are essential to the strength of the whole, e.g., the removal features are as necessary, in the writer's opinion, as the entrance provisions. The plan bows to local tradition and custom by continuing election of the chief justice and by permitting the electorate to vote on the continuation of incumbents in office. An ideal scheme would empower the governor to appoint the judiciary. But such a plan is not feasible for Chicago at the present time.

The two types of referenda involved would be freed in large measure from the nauseous elements of the present highly partisan contests. The chief justiceship, and to a lesser extent the associateships, would be subject to political selection and renewal. But the short ballot principle would apply. The plan would do much to attract able lawyers who now largely shun the bench and to obtain a genuine consideration of opposing candidates' merits. It would also institutionalize the past rôle of the Bar Association and would transfer an unofficial activity from a voluntary private agency to a duly constituted, responsible public agency. Such transfer would require a formal unification of the Bar now lacking in Illinois. But many states now have an incorporated Bar, and the movement is spreading rapidly.

The principal merit of the plan lies in the publicity which would be given to the nominating process. The Bar would receive nominations and would canvass them through committees and apply the Bar primary technique. The roster of eligibles would be more publicly projected than under the present rule of secret party caucus and partisan dictation. The Bar Commission could become a body of "experts" which would give all nominations for the bench the element of specialized information so sorely lacking under the elective system.

Political considerations would continue to influence the selective process. However, their venal effects would be much ameliorated, because the Bar, instead of the party organizations, would become the responsible agency for qualifying its members for the bench. Under this plan, the group now constituting the Chicago Bar Association would have some handles by which to take hold of a problem that now largely eludes its grasp.

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FOREIGN GOVERNMENTS AND POLITICS

The Nazis Reform the Reich.[1] Revolutions shift power not only from one economic class to another, but also from one governmental level to another. Not only is there a new deal between industrialists and laborers, between financiers and merchants, between those in the higher and those in the lower income brackets, but the centers of strength also shift from one region to another and from one governmental authority to another; and there is a new balance of power between the province and the nation, between the city and the state.

It may be, as the social theorist often contends, that the alterations in governmental areas, organization, and powers merely reflect and facilitate economic and class changes. Frequently, however, the governmental shift defies glib identification with the class shift, and sometimes it follows its own laws of development. Was not the effacement of some 40 French provinces in 1790 and the substitution of 83 administrative districts or departments a relatively lasting creation of the French Revolution, even though at the time these governmental reforms were overtopped by the ringing cry for Liberty, Equality, and Fraternity? Is not the union of seven constituent Russian republics, not to speak of two dozen autonomous regions and republics in the U.S.S.R., a significant experiment in national coëxistence, though again the foreground is dominated by the stirring slogans of the proletarian dictatorship? May not, in Fascist Italy, the drastic changes in national and local relationships engineered by Mussolini and by his municipal podestás outlast the assertive Italian Fascist legions themselves. And at present, in the United States, despite restricting Supreme Court decisions, is there not already some shift in the balance of power between Washington and the state capitals, between the state house and the city hall?

This process of the internal balance of power may be fruitfully examined in Nazi Germany today. What has the National Socialist government set out to do, what has it accomplished, and which way is it tending in this matter of the shifts in power in national, state, regional, and local government and administration? It will be convenient to discuss this problem under six headings: (1) liquidating the states; (2) regionalizing the Reich; (3) partitioning Prussia; (4) centralizing the administration; (5) coördinating the cities; and (6) "Gleichschalting" the personnel.

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[1] The author acknowledges his indebtedness to the Social Science Research Council for enabling him to study the German situation at first hand as a European fellow of the Council during the year 1933–34.

(The present article and that by Professor Wells which follows cover to some extent the same ground. Taken together, however, they furnish a very complete and up-to-date survey of the political and politico-geographical development of the Third *Reich*. MAN. ED.)

Liquidating the States. If the President of the United States were to adjourn all the state legislatures, strip the states of their sovereign powers, appoint federal administrators as governors of each of the forty-eight states, proclaim laws affecting ordinary state problems and dictate appointments to state offices from the White House, he would do what the German National Socialists are doing in liquidating the 16 German states (*Länder*). In Germany, all this has been accomplished by four principal laws decreed by the Hitler cabinet. (1) A "Preliminary Law for the Coordination of the *Länder* with the *Reich*," passed in March, 1933,[2] dissolved the state parliaments, and with the Communists and subsequently the Socialists barred, a new distribution of seats was established with Nazi majorities. Moreover, it was provided, as had already been done in permitting the *Reich* to modify the Weimar constitution,[3] that state law could disregard the existing state constitutions. (2) A "Second Law for the Coördination of the *Länder* with the *Reich*," passed in April, 1933, and also known as the "*Reich* Lieutenant Law" or the "*Reich* Governor Law" (*Reichsstatthaltergesetz*) provided for the appointment by the Chancellor of federal governors with power to appoint and remove state cabinets, dissolve state parliaments, order new state elections, prepare and publish state laws, appoint and dismiss higher state officials, and in general to enforce within the state the policy of the Chancellor.[4] (3) A "Law for the Reconstruction of the *Reich*," passed in January, 1934, transferred "the sovereignty of the states to the *Reich*," abolished the system of popular representation within the states, decreed that the *Reich* government could now by its own fiat modify existing state constitutions, and provided for the enforcement of the Reconstruction Law by orders issued by the *Reich* Minister of the Interior.[5] This law was supplemented in February, 1934, by a law abolishing the *Reichsrat*, which was the former federal council of states.[6] (4) A "*Reich* Governor Law" (*Reichsstatthaltergesetz*) of January 30, 1935, further empowered the federal governors to obtain reports from all *Reich* and state authorities in their respective districts, and to issue provisional regulations in urgent cases.[7]

Under these sweeping provisions, the actual changes were at first less drastic and sudden than was anticipated. Decrees were issued, it is true, under which state citizenship was completely abolished and state pardoning powers were transferred to the *Reich*.[8] But although sovereignty was transferred from the states to the *Reich* by the Reconstruction Law, the first decree issued under the law three days after it was passed re-delegated "the exercise of authority to the states," who were to act, however,

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[2] *Reichsgesetzblatt*, March 31, 1933, p. 153.

[3] *Ibid.*, March 24, 1933, p. 141.

[4] *Ibid.*, April 7, 1933, p. 173.

[5] *Ibid.*, January 30, 1934, p. 75.

[6] *Ibid.*, February 14, 1934, p. 89.

[7] *Ibid.*, January 30, 1935, p. 65.

[8] *Ibid.*, February 5, 1934, p. 85; February 3, 1934, p. 82; February 2, 1935, p. 74.

"in the name of the *Reich*."[9] Similarly, under the law abolishing the *Reichsrat*, the state delegations at Berlin had become powerless, but there was still no assurance about the ultimate disappearance of such irksome marks of state sovereignty as the Bavarian legation at the Holy See in Rome, the Württemberger and the Bavarian representatives on the Danubian Commission in Vienna, and the French *chargé d'affaires* and the papal nuncio maintained at Munich, the Bavarian capital.[10]

In fact, Nazi theory has not always been favorable to as complete a liquidation of the states as Germany is now headed for. The Party Program of 1921, from which the Nazis insist they never waver, did not contemplate a unitary state. Even where the Program spoke of the centralized corporate state to be established after the Nazi Revolution, the necessary enactments were to be made by "general laws promulgated by the *Reich* in the various states of the confederation,"[11] thus contemplating a continuation of the states and of the federal system. In 1927, the demand for a "higher sovereignty" for the *Reich* was made in the Nazi Bible, Hitler's *My Struggle* (*Mein Kampf*), but even here Hitler takes a stand against the unqualified centralization of the time on the grounds that (1) *Reich* centralization had actually meant the passing out of public jobs, not on the basis of merit, but on the basis of "political party affiliation, particularly to Jews," (2) "the Jewish-democratic *Reich*" needs "the criticism of the single states which had not yet been infected by the spirit of the times," and (3) centralization had merely been a tool of a foreign policy which mortgaged Germany's railways and finances for the purpose of meeting the unreasonable reparation demands of the Treaty of Versailles.[12]

This comparatively lukewarm attitude toward the unitary state before the Nazi Revolution was carried through may, of course, be treated as a temporary political policy which was to serve the Nazis until they came into power and captured the whole *Reich*, whereupon state autonomy would become both unnecessary and undesirable. But it is just as likely that they had not yet thought seriously about liquidating the states, for even after the Revolution there was a good deal of indecision and confused theorizing about preserving them. Dr. Helmut Nicolai, a leading Nazi official and sage on the subject of *Reichsreform*, pointed out that the new German state "required as strong decentralization as possible" and that the unitary form is associated with "racial cross-breeding" (*Rassenkreuzung*) and with the "Jewish-democratic-socialist state."[13] Göring warned that "the unitary state on the Roman pattern is not suitable for the German people."[14] Hitler himself, immediately upon taking power in March, 1933, promised that "the separate existence of the federal states will not be done away with."[15]

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[9] *Ibid.*, February 3, 1934, p. 81.

[10] The state delegations of the free city-state of Hamburg, for example, continued to operate in Berlin months after the law was passed. The French *chargé* at Munich was continued after the war on the basis of the preamble provision of the Treaty of Versailles which revived "the official relations with Germany and with the German states." See also Dr. Helmut Nicolai, *Der Neuaufbau des Reiches nach dem Reichsreformgesetz vom 30. Januar, 1934*, p. 55. This short study is No. 9 of a series entitled *Das Recht der nationalen Revolution* (Berlin, 1934).

[11] *Das Program der N. S. D. A. P.* This is point 25, the last in the Party Program.

[12] *Mein Kampf*, Chap. 10.

Nevertheless, less than six months later at the Nüremberg party conference, after the state liquidation policy had set in, Hitler stated that "the National Socialist movement is not the conservator of the *Länder* of the past, but their liquidator, in favor of the *Reich* of the future."[16] And with the passage of the Reconstruction Law, in January, 1934, Dr. Frick, *Reich* Minister of the Interior, was able boldly to announce: "The historical duty of our time is the creation of a powerful national unitary state in place of the erstwhile federal state," and that actually, with the passage of the Reconstruction Law, Germany had been "converted from a federal to a unitary state."[17]

Whatever may be the inconsistencies between former promises and present trends, there are the strongest political reasons why the Nazis will oppose with all their power the restoration of the *Länder*. They speak freely of the independent cultural mission of the states,[18] whatever that may actually mean, but they vigorously deny to them any form of political autonomy. For they are concerned about two possible dangers from the states: (1) the old party system and (2) a royalist restoration.

(1) Before the Nazi Revolution, the old party system enabled the state governments with hostile parties in power to flout the will of the *Reich* government, and as a result states had several times to be coerced by the armed forces of the *Reich* under Article 48 of the Weimar constitution.[19] During the days of the November Revolution in 1918, and the Peace Conference at Versailles, state autonomy made it possible for France to flirt with the idea of German dismemberment, especially in the Rhineland and in Bavaria. In fact, the threat to detach parts of the former Empire was serious enough to encourage such leaders as Preuss and others at the Weimar Convention to press their plans for a unitary, regionalized state, thus antedating by more than a decade the nationalist plan of the Nazis.[20] Particularist tendencies within the individual states continued, and even

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[13] *Grundlagen der kommenden Verfassung* (Berlin, 1933), pp. 32–34.

[14] *Deutsche Juristen Zeitung*, 1934, p. 852.

[15] *Reichstag* speech, March 23, 1933.

[16] Nüremberg speech, September 1, 1933.

[17] Radio address, January 31, 1934.

[18] *Ibid.*

[19] Nicolai, *Der Neuaufbau des Reiches*, pp. 42–44.

[20] *Verhandlungen der National Versammlung*, Vol. 328, p. 1801 *et. seq.*

nine months after the Nazis came into power Hitler had to admit at the Nüremberg party conference that the traditions of state autonomy, working hand in hand with political party interests in the early days of the Nazi régime, had so threatened the unity of the *Reich* that the government had to respond with the drastic *Reich* Governor Law of April 7, 1933.[21]

(2) The German system of royalty is, for many Nazis, one of the most dangerous of the state traditions. Germany has not merely a single emperor waiting to seize the imperial eagles, but a dozen royal families eager to pounce upon the vacant thrones of the several German states. And it must not be forgotten that many German princelings enjoy a substantial measure of popularity within their own territories even to this day. No wonder that Hitler in March, 1933, assured the *Reichstag* that the government would smash "any attempt within the single states to solve on their own responsibility the problem of a monarchist restoration."[22] He had to reiterate this warning as late as January, 1934, when in a speech before the *Reichstag* he condemned the states as "structural survivals" created "almost exclusively in the interest of reckless family power politics."[23]

As sources of party disaffection and royalist restoration, then, the states are a threat against the Nazi dictatorship on a number of fronts. As independent units around which competing political sentiments can continue to be organized, there is no place for them in the Nazi *Reich.*

Regionalizing the Reich. The states, then, are legally liquidated, but are they to disappear entirely from the map of Germany in favor of a completely new set of administrative regions?

Nazi theory on this subject has developed with delayed enthusiasm. The party platform, we have seen, actually speaks of the continuance of the "various states of the confederation," and Hitler's *Mein Kampf* goes no further on the question of regionalism.[24] After taking power, Hitler, in his *Reichstag* address of March, 1933, announced that there was to be no immediate change in German state boundaries.[25] In June, 1933, Dr. Nicolai, the Nazi expert in the Ministry of Interior, had to make a public explanation, under official pressure, that his book, *The Bases of the Coming Constitution*, which projected 14 reorganized German states, was merely

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[21] Nüremberg speech, September 1, 1933.

[22] *Reichstag* speech, March 23, 1933.

[23] *Reichstag* speech, January 30, 1934.

[24] The only passage in *Mein Kampf* which may be cited by those who wish to show that regionalization is an original Nazi principle is the remote statement that "National Socialism must enforce its principles without regard for existing state boundaries," p. 648. But the statement was made in discussing federalism, and the question of recasting state lines or of setting up regions is not taken up.

[25] Dr. Carl Schmitt, *Das Reichsstatthaltergesetz*, p. 12 (No. 3, *Das Recht der nationalen Revolution*).

"a scientific and personal analysis" and that the reorganization of the German *Reich* as he had planned it "does not come into question."[26] As late as January, 1934, after the 1933 party conference at Bayreuth had produced a good deal of unauthorized talk from officials about 37 German regions of the future, Dr. Ley, staff leader of the political organization of the Nazi party, forbade party members "to discuss verbally or in writing the question of *Reichsreform.*"[27]

With the passage of the Law for *Reich* Reconstruction in the same month, however, statements became bolder. Even Dr. Nicolai, after his rebuff of the previous year, went so far as to point out that "the boundaries of the *Länder* are no longer state boundaries, but merely administrative district boundaries."[28] Nazi jurists and *Reich* ministers now speak more freely of the future federal districts or provinces (*Reichsgaue*).[29] Dr. Frick, the Minister of the Interior, whose department is officially responsible for the general problem of *Reichsreform*, announced in January, 1934, that "there is no need in the new Germany for state boundaries;"[30] and late in the same year he answered to a press question on the "reorganization of the *Reich* in the form of *Reichsgaue*" that "the reconstruction of the *Reich* will proceed organically and step by step as time requires."[31] Early in 1935, the *Reich* Minister of Justice, Dr. Gürtner, stated that changes in his own department awaited "the reorganization of the *Reich*," and that "particularly unfavorable state boundaries must no longer block the way."[32] At the same time, *Reich* Minister Frick, in an article published in the *Europaische Revue*, announced that the process of *Reichsreform* will be completed under the control of Chancellor Hitler by a territorial reorganization of the *Reich* into *Reich* districts (*Reichsgaue*) of about three or four million inhabitants each.[33]

Besides these official statements, there is cumulative evidence in Nazi law and administrative practice that internal boundaries are being recast.

(1) The indirect references in the law are significant. The preamble of the Law for *Reich* Reconstruction of January, 1934, speaks of the unity of the German people without regard for "all inner political boundaries and obstacles," and the second decree under this law issued on November 27, 1934, speaks of the future "carrying through of the reorganization of the *Reich*."[34] More important still, the Law for the Preliminary Admin-

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[26] *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, June 24, 1933, p. 510.

[27] *London Times*, January 11, 1934.

[28] Nicolai, *Der Neuaufbau des Reiches*, p. 48.

[29] *Deutsche Juristen Zeitung*, 1934, p. 852; 1935, pp. 227, 264.

[30] Radio address, January 31, 1934.

[31] Deutscher Akademischer Austauschdienst, *News in Brief*, First November issue, 1934, p. 11.

[32] *Ibid.*, First April issue, 1935, p. 8.

[33] *Ibid.*, First June issue, 1935, p. 2.

[34] *Reichsgesetzblatt*, January 30, 1934, p. 75; November 29, 1934, p. 1190.

istration of the Saarland of January 30, 1935, refers to "the administration of the Saarland until its annexation with a federal district (*Reichsgau*)."[35]

(2) More in point are the actual provisions of the law which tamper with state boundaries as they now exist. The union of the two states of Mecklenburg-Schwerin and Mecklenburg-Strelitz on January 1, 1934, was a step in the direction of new and larger districts, and boundary adjustments now going on between Prussia and her neighboring states are breaking down rigid boundary barriers of long standing, although these tendencies were apparent even before the Nazi Revolution.[36] The Second Law for the Coördination of *Länder* with the *Reich* of April, 1933, weakened existing state boundaries still further by permitting the appointment of a single *Reich* governor for a combination of smaller states of less than 2,000,000 inhabitants each, and the *Reich* Governor Law of 1935 went still farther by permitting the Chancellor "to determine the official district of the *Reich* governor," thus permitting him to combine and cut across all state boundaries in setting up the districts under control of these lieutenants of the *Reich*.[37] At the time of writing, no boundary changes seem to have been made for this purpose, although in four cases small states have been combined under the control of one *Reich* governor: (1) Oldenburg and Bremen, (2) Brunswick and Anhalt, (3) Schaumburg-Lippe and Lippe, and (4) Mecklenburg and Lübeck.

The legal and administrative significance of the state lines of Prussia is also going by the board. The Second Decree on the Reconstruction of the *Reich* of November, 1934, placed the dozen Prussian provinces under the direct political control of the *Reich* instead of Prussia by giving the provincial presidents (*Oberpräsidenten*) similar powers to those exercised in the states by the *Reich* governors.[38] From this point of view, these provinces of Prussia have attained the status of administrative areas of the *Reich*.

(3) The territorial structure of the National Socialist German Workers party (N. S. D. A. P.), which has become the only legal party in the *Reich*, departs even more drastically from existing state lines. While the boundaries of the states and of the Prussian provinces are generally used to designate the outside limits of the districts (*Gaue*) of the party organization, states or parts of states have been flung together into thirty-one regions which by no means resemble the existing political division into 16 German states.[39]

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[35] *Ibid.*, January 30, 1935, p. 66.

[36] *Ibid.*, Teil II, April, 1935, pp. 371, 379.

[37] *Reichsgesetzblatt*, April 7, 1933, p. 173; January 30, 1935, p. 66; see also *Deutsche Juristen Zeitung*, March 1, 1935, p. 258.

[38] *Ibid.*, November 27, 1934, p. 1190.

[39] *Nationalsozialistisches Jahrbuch*, 1934, pp. 139–141. Austria and Danzig, outside of Germany, each constitutes a separate district, making the total 33.

(4) Administrative regions of another order are also growing up along with the strengthening and centralization of certain *Reich* services and functions.[40] Wide areas are involved in the order of December 5, 1934, issued by the *Reich* Ministry of Justice which created regional departments for the administration of justice combining Saxony with Thuringia, Württemberg with Baden, and Mecklenburg, Oldenburg, Hamburg, and Lübeck.[41] The Ministry of Posts has been proceeding with a new set of areas, which break down, for example, the persistent administrative barriers in this service between Prussia and Saxony. Likewise, districts for *Reich* financial administration are being developed in Northwest Germany. Thus parts of the Prussian province of Schleswig-Holstein, the Hansa city-state of Lübeck, and the state of Mecklenburg have been joined under a central office at Kiel; the city-state of Hamburg has finally been joined with the Prussian districts of Altona, Wandsbeck, and Harburg-Wilhelmsburg; and the city-state of Bremen has been joined with Prussia's Friesland area.[42] Though local coördination had been going on here for some time,[43] and though arrangements of this sort for the administration of *Reich* labor affairs on a regional basis had been launched before the Revolution, these developments may foreshadow the ultimate form which regional Germany is likely to assume, in the Hansa districts at least.[43a]

However, recent developments in Reich and Prussian administrative areas, newer party geography, even adjusted internal boundaries, will not of themselves produce a workable formula for an effective German regionalism. There are some very practical difficulties—(1) economic, (2) political, and (3) cultural—which may seriously hamper a regionalizing program.

(1) The Nazis are less concerned with economic regionalism than were post-war predecessors sitting at the Weimar Convention or at the state conferences for *Reichsreform* (*Länderkonfernz*), where serious discussion of territorial *Reichsreform* centered upon the economic unity of the proposed regions.[44] This lack of concern is largely to be explained by the fact

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[40] See section below on "Centralizing the Administration."

[41] Deutscher Akademischer Austauschdienst, *News in Brief*, December issue, 1934.

[42] *London Times*, March 8, 1934.

[43] See series entitled *Veröffentlichungen des Hamburgisch Preussischen Landesplanungsausschusses* (Hamburg, 1934).

[43a] *A Reich* Bureau of Regional Regulation set up in 1935 has a more imposing title than its mere activity of studying population distribution suggests. See *Reichsgesetzblatt*, March 30, 1935, p. 468, and June 28, 1935, p. 793; *News in Brief*, First August issue, 1935.

[44] *Reichsreform und Landerkonferenz, Die Beratung und Beschlüsse der Landerkonferenz und ihrer Ausschüsse* (Berlin, 1930). But see the economic explanations of Nazi nationalism by Dr. Bruno Wehner, "Trends in German Regional Planning," *The Planners' Journal*, Sept.–Oct., 1935, and following issues. For a draft of the Preuss proposal for "autonomous republics" and regions, see Herbert Kraus, *Ger-*

that Nazi economics is primarily an agricultural and not an industrial or urban matter. In point of fact, the Nazis want to prevent further urbanization, if not actually to reverse the flow of population. They demonstrate this well in their suburban settlement and subsistence homestead (*Kleinsiedlung*) policy, which was designated by other German governments before the Nazis came into power to relieve unemployment especially in *Grossstädte* (metropolitan cities of over 100,000), but has now been converted into a resettlement program in the smaller urban and in the rural districts. Before the Nazi era, in the period of January 1 to July 1, 1932, 57 per cent of the *Kleinsiedlungen* were established in metropolitan communities, 33 per cent in communities of 10,000 to 100,000, and only 10 per cent in communities of under 10,000. Since the Nazi Revolution, the process has been reversed. Between July 7, 1933, and May 4, 1934, only 21.6 per cent were established in metropolitan communities, 30.1 per cent in communities of 10,000 to 100,000, and as high as 48.3 per cent in communities of under 10,000, over half of these being communities of less than 2,000.[45] The resettlement program has thus under the Nazis become a rural and not an urban one.

Nazi agrarian and labor legislation follows the same tack. Laws forbidding testamentary succession and the partition of farms and estates, and related laws, tie peasants more closely to the soil. Decrees to regulate the flow of labor, under an elaborate permit system, prohibit agricultural workers from engaging in non-agricultural forms of labor, close certain industrial districts (notably Berlin) to outside workers, and prevent unemployed workers from drawing doles if they have accepted forbidden jobs or jobs in forbidden districts.[46]

Shifting regional economic developments which do take place are, moreover, frequently dependent upon military preparations, which may or may not turn out to be permanent productive enterprises. The drift of munitions manufactures from the Ruhr district to the interior, and the hurried housing and planning program which had been going on, long before the German rearming program was announced to the world, in barrack regions like Frankfort-an-der-Oder are cases in point.

It remains to be seen whether economic regionalism in industrial Germany can flourish amidst a back-to-the-land movement, a policy of dispersing metropolitan population, rural resettlement in preference to urban resettlement, and housing and industrial planning which is based

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many in Transition. (Harris Foundation Lectures, University of Chicago Press, 1924), p. 201.

[45] See Deutsche Bau und Bodenbank, *Denkschrift über die Vorstädtische Kleinsiedlungen ihre bisherige Ergebnisse und Entwicklungstendenzen* (1934).

[46] See, for example, the Reich Farm Inheritance Law, *Reichsgesetzblatt*, September 30, 1933, p. 685.

upon military preparations. It is possible that effective regional economic planning depends in large measure upon stable development around the core and within the hinterland of metropolitan and industrial areas. Until such a stable policy is adopted by the Nazis, planning for a lasting German regionalism may be merely a matter of enthusiastic conjecture.

(2) The political difficulties are as serious as the economic. To begin with, there is still, as we shall see, considerable resistance to tampering with existing state boundaries, even with the jagged boundary line of the giant state Prussia. Since the war, it is true, eleven small German states have disappeared through consolidations on five different occasions, but there were at least eight occasions in which consolidation proposals failed.[47] Since the Nazi Revolution, one consolidation has been carried through, in the case of Mecklenburg-Schwerin and Mecklenburg-Strelitz with a combined population of 805,000, but there are still seven out of the total of sixteen German states which have a population of less than this figure. These range from Oldenburg, with 574,000, to Schaumburg-Lippe, with only 50,000 inhabitants.

Important, too, are sectional differences which combine sentimental attachments and economic interests into powerful political convictions. In the National Socialist Germany of today, there is, of course, less opportunity than there formerly was to express sectional and separatist sentiment, but the forces behind German particularism, sectionalism, and even separatism, have not disappeared entirely. In the Hansa ports and the city-states of Bremen, Lübeck, and especially Hamburg, hard pressed by the shrinkage in international trade, opposition to the régime is strongest. And for a place like Hamburg, if we examine the figures of the last election on August 19, 1934, we find the opposition is not limited to the formerly Communist sections like St. Pauli, but appears in the well-to-do districts like Winterhude and Harvesterhude, which were and still seem to be strongholds of the democratic parties on the right.[48] Even within official and semi-official circles, statements are freely made. The president of the Hamburg Chamber of Commerce stated in May, 1934: "Hamburg, anxious for its world trade, is reproached from the National Socialist hinterland with being too liberal in her views. Hamburg is firmly rooted in the homeland, but her vital function is defined in the old Hanseatic motto 'Our Field is the World.' "[49]

(3) The cultural factor is for the Nazis the determining one in their anticipated program of regionalism. Hitler and the Nazi jurists speak freely of the "tribal regions" (*stammesmässigen Gebiete*) as the bases of

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[47] This is the number of unsuccessful attempts at boundary changes I have been able to discover through a variety of sources, but the figure is probably incomplete.

[48] The returns by districts are given in the *Hamburger Fremdenblatt*, August 20, 1934.

[49] *London Times*, May 5, 1934.

the future districts. But it is doubtful whether the old tribal areas of Germany really delimit significant districts, now that there has been so long a period of migration and admixture, and it is further doubtful whether these areas can be identified, even on the basis of dialect distinctions, as easily as Nazi racial theorists pretend.[50] Besides, the Nazis make no mention of the religious differences which presumably would complicate, or perhaps help to define, the cultural map of Germany and in fact have already been the occasion for some of the most serious challenges to the Nazi government. Even were it possible to forego these differences and to isolate and delimit German cultural areas, there would still be left the question whether economic and political interests coincide with the so-called cultural, whether in fact it is possible to arrive at areas based upon the difficult, and perhaps diametric, tests set up by the Nazi leaders, involving at one and the same time "tribal, agricultural, and economic relations" or "tribal traditions, geopolitical and economic points of view."[51] No amount of Nazi anthropological research for the "real" Saxonia, the "real" Franconia, the "real" Swabia, can allay the long-standing economic distinctions, political differences, religious animosities, and sectional antipathies which still play a large part in German socio-political geography.

The Partitioning of Prussia. By far the greatest obstacle to *Reichsreform* is Prussia's heavy predominance among the 16 states of the *Reich*. One glance at the map of Germany is sufficient to indicate Prussia's position. Prussia occupies over 60 per cent of the land area and contains more than 60 per cent of the population of Germany.[52] It is not one compact land mass, but spreads out like an amorphous jellyfish, encircling completely small states like Anhalt, crushing the borders of larger states like Saxony, creeping into the very heart of others like Hamburg, and confounding the boundary line of still others like Brunswick with some eight types of separated exclaves and enclaves, of exclusive, partial, and mixed sovereignty, totalling 200 or more.[53] Other states, too, are split up into unconnected parcels of territory, but Prussia is spread over such a vast area that it may still be designated, as A. Lawrence Lowell termed it forty years ago, the lion among half a dozen foxes and a score of mice.[54] Geographically, then, the problem of *Reichsreform* is not so much a matter of what is to be done with the *Reich* as it is a question of what is to be done with Prussia.

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[50] See "Karte der Deutsche Mundarten," Brockhaus, *Konversations Lexikon*, pp. 990–991.

[51] See Adolf Hitler, *Mein Kampf*, p. 646; *Reichstag* speech, January 30, 1934; *Deutsche Juristen Zeitung*, 1934, p. 1529; Nicolai, *Grundlagen der kommenden Verfassung*, pp. 38–41, 84.

[52] Under the 1933 census, Prussia covered 292,772 square kilometers of a German total of 468,780 (62.5 per cent). It contained 39,906,929 inhabitants out of a German total of 65,188,626 (61.2 per cent).

[53] It has been estimated that there are some 200 German enclaves and exclaves. The figure is too small, even for Prussia alone. The community of Woltorf, for example, instead of having, as it was assumed, 13 territorial splinters, on closer examination was found to contain 172 separate exclave and enclave parcels. Landesdirektion der Provinz Hanover, *Niedersachsen im Rahmen der Neugliederung des Reiches* (Hanover, 1931). I have been able to isolate not only the usual exclaves

The attack on the Prussian problem goes ahead on two flanks: (1) from below, the Prussian provinces are absorbing more power and are tending to adopt the status of independent *Länder* of the Reich in their own right; (2) from above, the *Reich* is taking powers and functions away from Prussia.

The first solution had been considered before the Nazis came to power. In fact, by 1921, the Prussian provinces had reached a stage where they were permitted to have their own representation in the *Reichsrat*, the federal council of states.[55] There had been, moreover, a number of plans to partition Prussia into a dozen or so independent states, and at the end of 1932, decrees had actually been prepared with this purpose in view.[56] It was left to the Nazis, however, to make the dozen Prussian provincial presidents practically equal in status to the *Reich* governors of the states themselves by a decree of November, 1934, thus bringing the provinces into a relationship with the *Reich* similar to that which exists between the *Reich* and the states.[57]

The second process—that of *Reich* absorption of Prussia's power—had also been going on before the Nazi Revolution. As part of the *Herren Klub* campaign to ease the Socialists out of power, Chancellor von Papen, in July, 1932, acting under the emergency clause of the Weimar constitution (Article 48), perpetrated what has been called the "rape of Prussia" by forcibly removing the Prussian cabinet from office. The control of Prussia has dominated the Nazi horizon in the same manner. The *Reich* Governor Laws of April, 1933, and January, 1935, provided that in Prussia, as differentiated from other states, the *Reich* Chancellor himself was to possess the power of the *Reich* governor, though he could transfer his

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and enclaves, but (1) *Uferexklaven*, land surrounded by another state on three sides and by a body of water on the fourth; (2) *Gebietszipfel*, long projections of land into another state; (3) *Verwaltungsexklaven*, land administered but not owned by a state; (4) *Gebietsplitterungen*, nebulous land parcels accompanying an exclave; (5) *Hoheitsteile*, land over which a state possesses sovereignty but does not administer; and (6) *Gemischtehoheitsteile*, parcels of mixed sovereignty.

[54] See also Roger H. Wells, *German Cities* (Princeton, 1932), pp. 16–21.

[55] *Preussische Gesetzsammlung*, June 3, 1921, p. 379.

[56] Kurt Jeserich, *Die Preussischen Provinzen* (Berlin, 1931); Wells, *German Cities*, p. 20.

[57] *Reichsgesetzblatt*, November 27, 1934, p. 1190.

power to the Prussian premier.[58] Moreover, the Nazis, as we shall see, have followed the policy of transferring power from Prussia to the *Reich* by fusing certain Prussian ministries with the *Reich* ministries.

If these legal and administrative developments continue, the Prussian problem is on the road to solution. There is, however, in Prussia, a unique resistance to partition, which may be overcome only with the greatest difficulty.

Prussia has always been regarded as the backbone of a powerful Germany, and even today, when the independent states are losing their significance and the demand for Prussian partition is growing, Prussia is still termed by Nazi jurists the "household power" (*Hausmacht*) of the *Reich*.[59] There has always been this double-dealing in practice and principle with respect to Prussia, even during the days of the Bismarck *Reich*. *Reichsreform* and regionalism were national planks of a number of German parties in the post-war period, but within the Prussian parliament, where these parties held the balance of power, proposals to reform Prussia met only with opposition.[60]

The historic antipathy between Prussia and Bavaria tends to encourage Prussia's stand against its own liquidation. At the Weimar constitutional convention in 1919, the cry was heard, "Smash Prussia," and during the Bavarian separatist movement of the same period, "Down with Prussia" and "War against Prussia," were frequent slogans.[61] Hitler himself, though his headquarters were at Munich, in Bavaria, was opposed to this "Prussian agitation."[62] However, even after the rise of his own party, with its emphasis on nationalism, he was unable to do away with the Prussian-Bavarian conflict. In 1925, the Strasser brothers, whose fate was exile and death at the hands of the Nazis, but who were at the time recognized Nazi leaders of Prussia, discovered the truly non-socialist streak of the Munich leader, and the cry went around in the Prussian Nazi circles, "We will not be governed by the Munich Pope."[63] To this day, there are still Prussians and Bavarians, Berliners and Müncheners, within the Nazi ranks, who dislike one another bitterly, and this regional feud strengthens Prussia's resistance to its own dismemberment.

Prussian personal power politics may also play an important rôle in blocking or delaying reform. The leading contender for the preservation of Prussia is, peculiarly enough, that Bavarian-born German national patriot, General Hermann Göring. Göring's star has risen higher in Prussia than in the *Reich*. He is, to be sure, a general in the *Reichwehr*;

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[58] *Reichsgesetzblatt*, April 7, 1933, p. 173; January 30, 1935, p. 66.

[59] *Deutsche Juristen Zeitung*, May 1, 1935.

[60] Jeserich, *Die Preussischen Provinzen*, pp. 284–285.

[61] *Verhandlungen der National Versammlung*, Vol. 326, p. 463, *et seq.*

[62] Hitler, *Mein Kampf*, p. 625.

[63] Schuman, *The Nazi Dictatorship*, p. 52.

he is president of the *Reichstag*, *Reich* Air Minister, *Reich* Forest Master, *Reich* Master of the Hunt, *Reich* Commander of the S. A. Auxiliary Police; but he is, in his most important administrative capacities, premier of Prussia, acting *Reich* governor of Prussia, commander of the Prussian police, head of the Prussian secret political police, and until recently was Prussian Minister of the Interior, a post he very grudgingly gave up. He feels that he has an inspired mission with respect to Prussia, which he has called the "Vanguard and Keystone of the Third *Reich*."[64] As we have seen, Nazi jurists like Dr. Nicolai have been forced to withdraw their published plans for *Reichsreform* which would partition Prussia, apparently under pressure from General Göring. Göring may be playing his own game, and it may be a temporary one, but it reflects the more permanent glories of Prussian power and the continued urge for personal dominance over the Prussian eagles and chancelleries, an urge which drove on the Hohenzollerns and which still offers some hope for a royalist restoration in Prussia and in the *Reich*.

Centralizing the Administration. In spite of historic Prussian ambitions, *Reich* power may continue to grow, particularly by way of the nationalization and centralization of supervisory and administrative functions. The advantage of such a tendency is that *Reichsreform* can proceed merely by absorbing state functions, personnel, and organization, without redrawing state lines. Thus it may become unnecessary for the Nazis to concern themselves too much with Prussian partition, *Reich* regionalism, or state liquidation; for there is very little power left with the states in any case.

The Nazi totalitarian state is a centralized state, and it brooks no competitor. An official Nazi pronouncement differentiates six types of administrative levels in German society: *Reich*, state, municipal, public corporation, vocational groups, political party. However, "all of these branches of administration do not exist independently of one another, but are based upon the administrative supremacy of the *Reich*."[65] The corporate state organizes itself on a plurality of levels, but it leaves room at the center for only one sovereign, the *Reich*.

Reich centralization is working its way out by (1) the appointment of *Reich* cabinet members as members of the Prussian cabinet, (2) the fusion of Prussian and *Reich* ministries, (3) the fusion of other state ministries with the *Reich*, and (4) the transfer of individual functions to the *Reich*.

(1) By June, 1934, all *Reich* ministers, save the Minister of Finance, had become at the same time ministers of the respective Prussian departments.

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[64] See Göring, *Germany Reborn* (London, 1934), especially pp. 135–141.

[65] See Deutscher Akademischer Austauschdienst, *News in Brief*, December issue, 1934.

(2) After July, 1934, the process went further than a mere personal union. Services and functions of both the *Reich* and Prussia began to come under the control of single ministries. Centralized departments arose under the titles of "*Reich* Ministry of Industry and Prussian Ministry of Industry and Labor," "*Reich* and Prussian Ministry of the Interior," "*Reich* and Prussian Ministry of Science, Education, and National Culture," "*Reich* and Prussian Ministry of Nutrition and Agriculture," and "*Reich* and Prussian Ministry of Justice." The internal organization of these ministries was generally a functional one, frequently cutting across and combining both *Reich* and Prussian administration, thus destroying, from an administrative point of view, the territorial differentiation between them.[66]

(3) In the case of one function, i.e., justice, the fusion of ministries has gone beyond Prussia and has included all the states. The Nazi drive toward centralization with respect to the administration of justice is merely an extension of former trends, since substantive laws and legal procedure had in general already become *Reich* and not state affairs. The National Socialists continued the process by means of three laws for the "Transfer of Jurisdiction to the Reich." The first, passed in February, 1934, announced that all courts administer justice "in the name of the German people;" notarial deeds were to be valid throughout the *Reich* instead of merely in the state of issue; and the *Reich* Minister of Justice was authorized to issue the necessary decrees for the transfer of jurisdiction to the *Reich*."[67] The second law, enacted in December, 1934,[68] permitted the appointment of special commissioners to transfer jurisdiction, and this was done for four regions; Bavaria, Saxony-Thuringia, Württemberg-Baden, and the Nord section consisting of Mecklenburg, Oldenburg, Hamburg, Bremen, and Lübeck. In pursuance of this law, moreover, the *Reich* on January 1, 1935, was to take over directly and exercise in its own name the business of the highest authorities of justice in Hesse, Brunswick, Anhalt, Lippe, and Schaumburg-Lippe. A third law of January 30, 1935, transferred to the *Reich* after April 1, 1935, the personnel, the budgets, and the property of all state judicial authorities and provided for the necessary financial adjustments between states and *Reich*.[69]

(4) A final means of administrative centralization is the *Reich* absorption of functions (*Verreichlichung*). For example, chambers of industry and of commerce and stock and mortgage banks have been placed under the control of the *Reich* Ministry of Industry. Similarly, by law of July 3, 1934, the surveying system was transferred to the *Reich* Ministry of

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[66] *Ibid.*, October issue, 1934, January issue, 1935.

[67] *Reichsgesetzblatt*, February 19, 1934, p. 91.

[68] *Ibid.*, December 5, 1934, pp. 1214–1215.

[69] *Ibid.*, January 30, 1934, pp. 68–69.

the Interior, and by law of the same date, the work of land settlement was transferred to the *Reich.*[70]

All of this extensive centralization is still largely in a transitional stage. The work of land settlement just referred to, for example, was taken over by the *Reich*, but at the same time it was announced that "the present state organizations are retained." Similarly, with the combination of all the ministries of justice, separate budgets and personnel were at first retained, though administrative centralization had proceeded to a point where Prussian officials had been permitted to be active in *Reich* duties and where budgets of the highest state judicial authorities were placed at the disposal of the *Reich* Minister of Justice. Even the specific provisions for the transfer of judicial personnel and finances to the *Reich* in the Third Law for the Transfer of Jurisdiction could not go into effect on April 1, 1935, as provided, because, as the Minister of Justice stated, "the *Reich* laws have not as yet been adjusted to individual requirements in the states," although, in name, 2,000 offices and 65,000 officials engaged in administering justice were transferred to the *Reich.*[71] Centralization is going on in Germany, but drastic administrative changes are being put into operation much more slowly than official pronouncements promised.

Coördinating the Cities. The *Reich* can control political power and policy without absorbing state functions or modifying state boundaries or liquidating the states. The Nazis recognize this possibility in their municipal policy, and instead of liquidating the cities or absorbing their functions, they are coördinating, or "gleichschalting," them in a variety of ways: (1) legal, (2) financial, (3) economic, (4) regional, (5) philosophic, and (6) political.

(1) The principal legal landmark in Nazi municipal administration is the German Municipal Statute of January 30, 1935, passed, it will be noted, by the *Reich* government, not by the states. It lays down a number of general principles about the functions of municipalities, unifies German municipal organization, and provides a basis for political, personnel, and financial coördination of cities in the light of the general policy of the *Reich.* While it does not fundamentally modify the structure and practices of German municipal government, it enacts two drastic changes: the former elective legislative council is eliminated in favor of a purely advisory council, and party leaders are permitted to control the mayor or *Bürgermeister*, who nevertheless remains the responsible head of the municipality.[72] However, here, as in other fields of *Reichsreform*, the

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[70] *Ibid.*, July 3, 1934, p. 568.

[71] *Deutsche Juristen Zeitung*, 1934, pp. 1340–1341. Deutscher Akademischer Austauschdienst, *News in Brief*, December issue, 1934; April issue, 1935.

[72] *Reichsgesetzblatt*, January 30, 1935, pp. 49–64. For details, see following section on "Gleichschalting the Personnel." See also, Surén and Loschelder, *Die Deutsche Gemeindeordnung* (Berlin, 1935).

Nazis were able to draw upon the ideas of their predecessors; for as early as 1925, a draft of a comprehensive municipal statute was prepared by the *Städettag*, the German Union of Cities.

(2) The Nazis have acted with greater originality in coördinating the cities financially. While the Nazi movement in the states drew its strength from the claim that there had been a disintegration of national political sentiment, in the cities the compelling argument was the promise of financial reform and relief, particularly for those classes burdened with heavy taxes. Despite their socialist pretensions, the Nazis asserted before their advent to power that they would fight an increase in taxes, and after their victory they spoke openly about the overtaxed middle class (*Mittelstand*) as the great sufferer and stepchild of municipal financial policy.[73] There was room for such an appeal. Not only had the municipal debt reached an appalling level,[74] but there had been a vast increase in the expenditures for public services, particularly for unemployment relief—a development which the Nazis had dubbed "tax bolshevism" (*Steurbolschewismus*). By the time when the Nazis came to power, over half of the cost of unemployment relief was defrayed by the cities.[75]

The Nazi plan is to extend national control over all public budgets, including those of the municipalities. Accordingly, administrative practices tending toward coördination are growing. These range from the unification of the fiscal year for *Reich*, states, and cities to the continued unification of city and *Reich* taxes levied on the same objects.[76] Slogans are still being circulated by high officials about financial home rule (*Selbstverwaltung*),[77] and home rule may be partly preserved. But at the same time the goal, with respect to taxes at least, is clearly stated by *Reich* financial administrators: "The *Reich* alone will determine who aside from itself may raise taxes and according to what standards."[78]

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[73] Karl Fiehler. *Nationalsocialistische Gemeindepolitik* (1932), p. 29; Staatskommissar Dr. Strolin, "Gemeinde und Mittelstand," *Berliner Kommunale Mitteilungen*, June 15, 1933, p. 97; also published in *Die Nationalsozialistische Gemeinde*, July 15, 1933, pp. 22–23; Staatssekretär Fritz Reinhardt, "Der Reinhardtsche Steuer-Reformplan" *Berliner Lokal Anzeiger*, July 1934.,

[74] By March 31, 1933, when the Nazis definitely had come into power, the municipal and district debt was 11,330,000,000 marks, which was about the same as the *Reich* debt exclusive of the reparations and foreign debt (11,602,000,000 marks). United Kingdom, Department of Overseas Trade, *Economic Conditions in Germany to June, 1934*, p. 52.

[75] Statistics compiled by the Kommunalwissenschaftliches Institut, Berlin. See also Dr. Morawski "Die Auswirkung der Marxistischen Misswirtschaft," *Berliner Kommunale Mitteilungen*, April 15, 1933, p. 61.

[76] "Staatsekretär Fritz Reinhardt, Der Reinhardtsche Steuer-Reformplan," *Berliner Lokal Anzeiger*, July, 1934.

[77] *Ibid.*, Dr. Markmann, "Die Aufgaben der Gemeinden in nationalen Staat," *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, June 10, 1933.

[78] Fritz Reinhardt, *op. cit.*

Perhaps the cities will find some compensation in this form of *Reich* control. During the first year of the Nazi régime, the cities were relieved of much of their burden of unemployment relief and housing expenditures, and in addition they were freed from the pressure of their debts by refunding legislation providing for debt pools of unions of cities.[79] Even before the Nazis came to power, there had developed in German administrative circles a number of arrangements under which city finances came under the control of the *Reich*, among them being the well-known *Sperrgesetz*, the Erzberger reforms, the *Dietramszeller Verordnung*, and the *Reichsparkommissar* system, under which *Reich* financial experts audited finances of certain cities and put into operation certain economies.[80] As in other fields of *Reichsreform*, the Nazis have vigorously pursued a policy which was already part of German administrative development.

(3) The control of economic or utility functions may, on the other hand, follow a new course of development. German cities always boasted of their power to extend municipal services, but now legal provisions and political pronouncements lay down the principle that the economic functions of municipalities should be limited strictly to those services which are urgently necessary for the public where no other operating agency is available.[81] This does not seem to be in full keeping with the rather free policy of municipalization which has prevailed in the past. How far this policy is actually being worked out, it is difficult to say at present, although in Berlin it is true that such an agency as the municipal brick works was given over to private hands.[82]

(4) The Nazis also seem to be following a more limited policy in the reform of municipal boundaries and regions. The *Gemeindeordnung* of 1935 speaks of municipal areas which will give some consideration to the "connections of the inhabitants and the functional efficiency of the community." It also centralizes responsibility for changes in city boundaries by vesting power in the hands of the *Reich* governor, who is to act after the city is heard in proceedings before administrative officers.[83]

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[79] Dr. Harry Goetz, "Gesunde Geimeinden Gesunden Staat," *Berlin Kommunale Mitteilungen*, December 20, 1933, pp. 269–270.

[80] See *Gutachten des Reichsparkommissar* (1932); see also *Reichgesetzblatt*, August 24, 1931, p. 453.

[81] See the Municipal Statute *Reichsgesetzblatt*, January 30, 1935, sec. 67; Kurt Jeserich "Gemeinde und Wirtschaft," *Deutsche Gemeinde Beamten Zeitung*, June 3, 1934, p. 316; see also *Deutsche Juristen Zeitung*, February 1, 1935. But cf. Gottfried Feder, "Die Zukunft der Öffentlichen Wirtschaft," *Jahrbuch für Kommunalwissenschaft*, 1934, Vol. I.

[82] *Berliner Kommunale Mitteilungen*, June 5, 1934, p. 218; Ministerialdirektor Dr. Suren, "Zur Deutschen Gemeindeordnung" *Deutsche Juristen Zeitung*, February 15, 1935, p. 202.

[83] *Reichgesetzblatt*, January 30, 1935, secs. 4, 15.

Whether many changes can be anticipated in this field is, however, doubtful. The Nazis have in their *Reichsreform* plans neglected the metropolitan area, or the *Grossstadt* community, in contrast to the great degree of popular and official interest in the subject before the Revolution.[84] Some reorganization is pending in Hanseatic metropolitan centers like Hamburg, but this is more in the nature of the reform of state lines, since the Hansa towns are independent city-states.[85] There is, moreover, some talk about giving administrative unions of neighboring cities (*Gemeindeverbände*) more powers, but few changes have thus far been made.[86] Of the *Grossstädte*, only Gross-Berlin has undergone some reconstruction, and here too the area has remained the same,[87] although the functions of the borough (*Bezirke*) have been somewhat enlarged.

Indeed, the direction of Nazi policy has been toward the smaller unit and away from the *Grossstadt*. Nazi pre-revolutionary theory was wary about the enlargement of municipalities, and to this day it is possible that the strengthening of the *Grossstadt* will have to give way to considerations of a non-urban agrarian policy on the one hand, and on the other hand to the interests of middle-class suburban taxpayers who do not want to assume the burden of paying taxes to a larger community with greater and increasing expenses and diminishing revenues.[88]

(5) German municipal government today shares the world philosophy (*Weltanschauung*) and the racial mysticism of the Nazis. An authoritative consideration of "The City in the National Socialist State" by a leader of the German Union of Cities refers to the city as a "community of blood" (*Blutsgemeinschaft*), a "racial unity" (*Rassenmässige Einheit*), a "tribal unity" (*Stammessmässige Einheit*), and a "community of fate" (*Schicksalsgemeinschaft*).[89] This form of theorization leads to further generalizations which attempt to reconcile the principle of dictatorship with municipal democracy.[90]

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[84] See *Frankfurter Zeitung*, April 14, 1929.

[85] *Veröffentlichungen des Hamburgisch Preussischen Landesplanungsausschusses; Hamburger Fremdenblatt*, September 15, 1933.

[86] "Die Aenderungen des Kommunalrechts," *Der Gemeindetag*, December 20, 1933, pp. 558–561.

[87] *Preussische Gesetzsammlung*, June 29, 1934, p. 319; *Jahrbuch für Kommunalwissenschaft*, 1934, Vol. II. The general German Municipal Statute does not apply to Berlin, Sec. 122.

[88] Karl Fiehler, *Nationalsozialistische Gemeindepolitik*, pp. 48–49 (Nationalsozialistische Bibliotek, No. 10, 1932).

[89] Dr. Kurt Jeserich, "Die Gemeinde im Nationalsozialistischen Staat," *Der Gemeindetag*, August 15, 1933, pp. 309–311; Professor Dr. Arnold Kottgen-Greifswald, "Die Neuordnung der kommunalen Selbstverwaltung," *ibid.*, December 20, 1933, pp. 545–552.

[90] *Ibid.*, Dr. Markmann "Die Aufgaben der Gemeinden im nationalen Staat," *Reichsverwaltungsblatt und Preussisches Verwaltungsblatt*, June 10, 1933, p. 461

The Nazis also assert that they are merely perpetuating the traditions of von Stein, the nineteenth-century reformer of German municipal government.[91] However, the heart of Stein seems to have been more in popular participation and representation in municipal affairs,[92] while to the Nazis these notions are anathema. As we have seen, they have already eliminated the elective council and have substituted a small advisory council selected by mere appointment. Perhaps the realization of this conflict between the ideas of Stein and of the National Socialists explains why certain Nazi jurists are so anxious to reconcile the two, and why Nazi law itself refers assuringly to the Stein tradition. The preamble to the Municipal Statute of 1935 mentions von Stein and his "true spirit of the creation of municipal administration."[93] An earlier Prussian law points out that "von Stein tried to solve the problem . . . but it was left to Adolf Hitler in the organization of the N.S.D.A.P. to develop true German freedom."[94]

(6) Nazi politics takes a more certain turn than Nazi philosophy. Propaganda on municipal affairs is dictated from above. Journals which were formerly Nazi party fighting sheets, like the *Berliner Kommunale Mitteilungen*, have practically become organs of official expression, and publications of an administrative and technical nature like the *Deutsche Gemeindebeamten Zeitung* reflect the new national political emphasis.[95]

Nor does party organization disregard municipal matters. The N.S. D.A.P. has an office for municipal politics (*Kommunalpolitisches Amt*), and there is a German Union of Cities (*Der Deutsche Gemeindetag*). Both of these organizations are headed by Karl Fiehler, *Burgermeister* of Munich and a Nazi leader of long standing. The *Gemeindetag*, representing a fusion of eighty-nine previous unions of municipalities, was launched by Fiehler in May, 1933—a couple of months after the party came into power.[96] For some time, even before the Nazi victory, the cities had been articulating themselves on a national scale through the *Städetag*, which

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"Runderlass von Ministerpräsident Göring," *Berliner Kommunale Mitteilungen* January 5, 1934, p. 2.

[91] Karl Fiehler, *Nationalsozialistische Gemeindepolitik*, p. 67; Reich Minister Dr. Frick, "Reich und Gemeinden eine Einheit," *Berliner Kommunale Mitteilungen*, February 20, 1934, p. 62.

[92] Guy Stanton Ford, *Stein and the Era of Reform in Prussia* (Princeton, 1922), Chap. 8.

[93] *Reichsgesetzblatt*, January 30, 1935, p. 49.

[94] *Preussische Gesetzsammlung*, December 18, 1933, p. 427.

[95] See articles by P. Sieben, "Gegen die Philister, Miesmacher, und Nörgler," Willibald Krause, "Die Verwaltung der Gemeinden in den früheren deutschen Kolonien," June 3, 1934, pp. 310, 327.

[96] Bürgermeister Treff, "Das Gemeindeverbandwesen in Deutschland," *Berliner Kommunale Mitteilungen*, February 20, 1935, p. 62.

may be regarded as the forerunner of the new *Gemeindetag*, and even officially through the inter-party Committee on Municipal Politics of the *Reichstag.*[97] The Nazis, however, took the opportunity of formalizing this development into law. In December, 1933, a *Reich* law was passed declaring the *Gemeindetag* a public corporation, with the power of advising, preparing evidence, exchanging experiences, and expressing opinions on subjects involving the relationships of cities, states, and the *Reich*, all this work to be done, however, under officers, committees, and proceedings controlled by the *Reich* Minister of the Interior.[98] Thus the chain of relationship has become a political and a legal one, running from the party to the Union to the *Reich* Ministry.

And yet the political coördination of cities may prove a harder task than is anticipated. There is, first of all, obstructive city particularism to be overcome. The German is deeply devoted to his city, and the city frequently has as great a sentimental appeal to him as the nation itself. In fact, cities and their flags, coats of arms, and traditions have a longer history than the *Reich* itself, and this is one of the factors which explain the struggle for a stronger nationalism in Nazi Germany of today. More important still for the future of Nazi political coördination is the fact that the city, and particularly the large urban center, the *Grossstadt*, which embraces 30.2 per cent of the German population, is, after all, the home of the German proletariat. There are no peasants or agrarians here with allegiance to a soil, but workers who in large measure have in the past been politically articulate. Dr. Goebbels, N.S.D.A.P. leader for the Berlin district, knew whereof he spoke when he announced, "Who possesses Berlin, possesses the *Reich*." But is formal political possession enough to change the political complexion of the city which he himself admitted was, "next to Moscow, Europe's reddest city?"[99]

The Germans realize the difficulties and are straining every effort to curtail urban proletarianism, using a wide range of devices. In a formerly Communist center like Hamburg, exhaustive research is now going on for the purpose of isolating what is termed the "kernels of asocial behavior" by the spotting and delimitation of areas where delinquency, subnormality, and Communist votes overlap. As a sample of the urgency of the problem, it is interesting to see German students and professors in their studies of urban political life applying the techniques of American social scientists—in fact, the very spot maps of the Chicago ecological studies. Nazi scholars, and Nazi politicians too, thus realize that city proletarianism, as well as city particularism, may make municipal coördination more difficult than state liquidation.

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[97] *Ibid.* [98] *Reichsgesetzblatt*, December 15, 1933, pp. 1065–1067.

[99] Dr. Goebbels, "Das erwachende Berlin," *Berliner Kommunale Mitteilungen*, January 5, 1934, p. 18.

"Gleichschalting" the Personnel. In its broader sense, *Reichsreform* is a problem of the public personnel hierarchy as well as of governmental structure. For the Nazis, the task is chiefly one of coördinating, or "gleichschalting," the public service under the principle of political leadership (*Führerprinzip*). This notion is in line with the fascist conception of the élite, which assumes that society is best served when, in the state as a whole, and on every level of administration, orders come from a single superior and are implicitly obeyed. The leadership principle is applied to the entire official hierarchy, from the principal political posts to the most minor of civil servants.

The principal political posts are held by a new set of officials formerly unknown to the German constitution. At the apex stands the Realmleader (*Führer*), who combines the offices of Chancellor and President since the law and plebiscite of August, 1934, which the Nazis regard as a high point in *Reichsreform* development.[100] The *Reich* governors, appointed by the *Führer*, occupy another level of political leadership as the permanent political representatives of the *Reich* government in the states. The *Reich* governor may be, and sometimes is, at the same time state prime minister.[101] On the municipal level, we find the commissar for Berlin (*Staatskomissar*), and for other cities there are "party representatives" (*Beauftragte der N.S.D.A.P.*).[102] These officials may be said to be commissars, occupying positions in the cities roughly comparable to the *Reich* governors in the states.

These newer political officials control the established officials and the civil service. The *Führer* himself, on the suggestion of the *Reich* governor, appoints and dismisses the members of the state governments.[103] City *Bürgermeister* and assistants are appointed by the supervising officials of the Ministry of the Interior, in consultation with, and on the advice of, the representatives of the N.S.D.A.P. Under the Municipal Statute of January, 1935, for example, the party representative, after hearing from the city council, suggests three candidates for *Bürgermeister*, from whom the *Reich* Minister of the Interior chooses one.[104] The party leaders also hold the balance of power in the appointment of the city advisory councils which have been substituted for the formerly elective councils in the cities, and even in the districts or boroughs of Berlin (*Bezirke*).[105] Likewise, the entire public service, *Reich*, state, and municipal, is reckoned as being under the control of the party as well as the national state. Control from above is so complete that the right to appoint or dismiss state public officials is even in the hands of the *Führer*, though he may, and actually does, delegate the power to subordinate officers.[106]

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[100] *Reichsgesetzblatt*, August 2, 1934, p. 747; August 3, 1934, p. 757. See statement of Dr. Frick, *Reich* Minister of the Interior, August 13, 1934.

[101] *Reichsgesetzblatt*, January 30, 1935, p. 65, sec. 4.

[102] A Berlin commissar was appointed on March 15, 1933, soon after the Nazis took over the government, and the necessary laws were published on May 31, 1934. *Deutsche Gemeindebeamten Zeitung*, April 22, 1934, pp. 212–213. The party representative for other cities is mentioned in the *Reich* Municipal Statute of January 30, 1935, secs. 41, 51, 55.

[103] *Reichsgesetzblatt*, January 30, 1935, p. 65, sec. 5.

[104] *Ibid.*, p. 54, sec. 41.

Just how far the former personnel has been purged and Nazi replacements made cannot yet be determined. Some of the most critical observers of the Third *Reich* admit that the number is small,[107] but in certain instances and areas the actual figures show a drastic turnover. In Berlin, for example, there was a cleansing process (*Säuberungsaktion*), directed against Marxists, Jews, and others who were alleged to be enemies of the state, involving wholesale charges of corruption and inefficiency, although few of these charges were substantiated in judicial proceedings in the cases where appeals were ventured.[108] By July, 1933, in the Berlin borough government alone, there had been 2,679 dismissals publicly enumerated, besides innumerable unlisted dismissals. The figures ranged from 567 in Wedding, the Communist stronghold, to 13 in Zehlendorf, a wealthy suburb where the party report cryptically explained, "Marxism has little influence here."[109] Official Nazi municipal policy had been that "party is no qualification for office," but the evidence is strong that Nazis have in practice violated this policy far more than their nationalist and socialist predecessors, whom they now charge with having applied the spoils system.[110]

Though it cannot be said that the Germans are establishing a patronage system on the American model, it is true that party members are given preference in appointments to public office, and that the higher political posts are given to certain classes of an easily distinguished party élite. In Prussia, the members of the Prussian State Council, appointed by Prussian Prime Minister Göring, include the party, military, and industrial élite: Ernst Rohm and Karl Ernst (S. A. chiefs now dead and dishonored since the Blood Purge of June, 1934), Heinrich Himmler (S. S. leader and chief of secret state police), Dr. Ludwig Müller (Nazi *Reich* Bishop), Prince August Wilhelm (the Nazi's popular Prince Auwie), Fritz Thyssen (Nazi industrial magnate). These positions are meant to be honorary, but they still carry allowances, privileges, and emoluments which are of the utmost value in the personal and class struggles of a shrinking revolutionary economy.

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[105] *Ibid.*, p. 54, sec. 51.

[106] *Ibid.*, p. 65, sec. 7.

[107] Frederick L. Schuman, *The Nazi Dictatorship* (New York, 1935), p. 251.

[108] Erich Berger, *Berlin Wird Deutsch* (Berlin, 1933).

[109] H. Treppe, "Die Reinigungsaktion in den einzigen Bezirken Gross-Berlins," *Berliner Kommunale Mitteilungen*, July 1, 1933, pp. 121–122.

[110] Karl Fiehler, *Nazi Gemeindepolitik*, p. 71. See R. H. Wells, *German Cities*, p. 262.

Despite the larger rôle played by party selection in Germany, the administrative hierarchy and the traditional power of the permanent official remains intact in large measure. Under the existing system, it is true, there is room for conflict between the political official and the civil servant. In Berlin, for example, there was for a time what seemed to be a personal issue between the State Commissar, Dr. Lippert, who was a favorite of Hitler, and the *Bürgermeister*, Dr. Sahm, who was a close political associate of the late President Hindenburg, and who was finally forced out of office in November, 1935. Moreover, the Commissar's office duplicated to some extent the functions, supervision, overhead, and staff of the regular city administration. In the states, too, *Reich* governors, acting side by side with state prime ministers, occasioned "considerable difficulties," according to the official report,[111] and as a result the *Reich* Governor Law of January, 1935, had to permit the fusion of the two posts in certain cases.[112] The tendency, consequently, is to set limits to the powers of the newer political officers and to reëstablish the supervisory functions of the *Reich* ministries (*Aufsichtsbehörde*). The *Reich* Governor Law of January, 1935, for example, provides for ministerial supervision over the *Reich* governors,[113] and the Municipal Statute of the same date assigns to the Ministry of the Interior the power to decide in case of conflict between the party representatives and the *Bürgermeister*.[114] In fact, the *Bürgermeister* himself is not quite in as subordinate a political position as the earlier developments indicated, and is now referred to in the law as the "leader of the city" (*Leiter der Gemeinde*).

Political "gleichschalting" is the order of the day in Germany, but the process is limited by political expediency, and above all by the traditions of the German civil service.

Reichsreform—A Nazi Mission. It may turn out to be one of those unexpected twists of history for *Reichsreform* to become one of the principal contributions of the Nazi régime. Of the two major planks of the National Socialist program—nationalism and socialism—the trend of events in Germany today emphasizes nationalism and not socialism; and nationalism means not only reassertion of power among the family of nations without, but also rebuilding of the governmental system within; it means not only the smashing of the Treaty of Versailles, but the creation of a centralized state machine at home. Nationalism in Germany had a late start as compared with other nations, and today the Nazis admittedly look forward to "that great historical development which for centuries has been the object of the most intense yearnings of the

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[111] Deutscher Akademischer Austauschdienst, *News in Brief*, First February issue, 1935, p. 3.

[112] *Reichsgesetzblatt*, January 30, 1935, p. 65, sec. 4.

[113] *Ibid.*, sec. 3.

[114] *Ibid.*, sec. 33, *et. seq.*

German Nation: the centralized national State of the Germans, the Third *Reich.*"[115]

But it must not be assumed that *Reichsreform* is a Nazi creation. Napoleon, rather than Hitler, actually gave the vital start to the process one hundred and thirty years ago when he destroyed the Holy Roman Empire and swept away some 1,800 German principalities. Bismarck's contribution, culminating in the organization of the German Empire at Versailles in 1871, must not be forgotten. At Versailles again in 1919, the Allies unwittingly gave great impetus to the movement by decreeing exorbitant indemnities against the German people. These reparations could not be paid without increased national efficiency and systemization (*Rationalisierung*), and in government this meant administrative reform (*Verwaltungsreform*) and *Reichsreform.*

The Nazi party itself, far from being the originator of post-war *Reichsreform,* was as much a product of the Treaty of Versailles as the *Reichsreform* movement itself. The Party Program made no mention of *Reichsreform,* and even after the party came into power it was at first relatively lukewarm toward drastic changes. Later, the National Socialists drew largely on the ideas, technical research, and even the legislation, developed by their predecessors. A centralized state was demanded by the hated liberals and Socialists—even by the Jew, Professor Preuss himself—at the "traitorous" Weimar Convention. *Reichsreform* and Prussian reform had been studied and planned for by administrators and scholars during the whole post-war period. Subordinate units of government, including cities, were being studied and financially controlled by *Reichstag* committees and under *Reich* laws. Data and plans now in official files ready to be used for *Reichsreform* are Nazi property by possession only, for in large measure this material had been studiously prepared by the experts and committees of the *Länderkonferenz* and other agencies long before the Nazis ever got into the running for the control of the German government.

Yet the Nazis have acted where others have merely planned and studied. They have converted Germany from a federal to a centralized unitary state, destroyed state sovereignty, established *Reich* control over state legislation and appointments, and have installed in each of the states *Reich* governors with power to make ultimate political decisions. They have started the process of territorial reform towards an avowed goal of establishing new German districts of three or four million inhabitants each, by the appointment of *Reich* governors for districts of more than one state, by continuing the former policy of merging smaller states, and by the establishment of *Reich* administrative and party districts which disregard state lines. Prussian reform has been furthered by the development of direct dealings between the *Reich* and the dozen Prussian provinces, without the intermediation of the Prussian state, and by the fusion of all *Reich* and Prussian ministries. Administrative control has been further centralized in the *Reich* by the fusion of the ministries of justice of all the states with the *Reich* Ministry of Justice, and by the absorption of certain state functions by the *Reich.* Municipalities have been coördinated by means of a uniform *Reich* Municipal Statute, a nationalized tax and revenue program for all levels of government, and by political centralization through press and party and through the German Union of Municipalities. The personnel hierarchy of the *Reich,* as well as its governmental structure, is being reformed by the nationalization of control over personnel; and after an initial wave of politicization under Nazi *Reich* governors and commissars, the powers of the German bureaucracy are being to some extent reëstablished.

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[115] Statement of Dr. Frick, Minister of the Interior, Deutscher Akademischer Austauschdienst, *News in Brief,* First June issue, 1935, pp. 2–3.

Reichsreform under the Nazis must, however, overcome some serious obstacles.

(1) German sectionalism may interrupt the process. Already difficulties have been caused, mainly behind the scenes to be sure, as a result of diametric trade interests in the Rhineland, the drift of heavy industry for military purposes toward the interior, the demand from the Hansa port cities for a more certain policy of international good-will. In addition, historic antipathies and religious animosities are perhaps taken too lightly by the Nazis, who lightly believe they can apply the original tribal areas of the ancient Germans.

(2) Another danger is that politics, personal and dynastic, expressing itself through the continuance of Prussia as the household power of Germany, may wreck the program. General Göring, with all of his Prussian offices and loyalties and decorations, may be nothing but the symbol of an eager Hohenzollern restoration. Unless the Nazis are careful, the *Reich,* instead of swallowing Prussia, may itself be swallowed by the Household of the Hohenzollerns.

(3) In their enthusiasm for reform, the Nazis may make disruptive administrative changes too suddenly. Already they have had to issue orders replacing powers in the hands of the liquidated states, to admit that administrative centralization in the *Reich* must go more slowly during the period of transition, to provide for more supervisory control by the permanent civil service over the decisions of party and political officials, and to recognize that the turnover in office for political reasons has in some cases been too rapid.

(4) Finally, Nazi *Reichsreform* gives undue recognition to the urban-economic character of German life. State boundaries and state sovereignty can be liquidated, but can the Nazis transform the political ecology of a

country which, next to Britain, is the most urban in the world, by means of an anti-urban, anti-*Grossstadt*, anti-municipalization, anti-proletarian policy? A pro-agricultural policy and a policy of de-urbanization may be encouraged, but can healthy economic regionalism be developed if this is pressed too far, or if the regional developments which go on are to be dictated by considerations of military strategy and munitions manufacture in preference to considerations of existing population agglomeration and economic productivity. Moreover, with the state level of government out of the way, Germany may find that she needs a greater instead of a lesser degree of urban, metropolitan, and regional planning and self-government to relieve the pressure on Berlin. Political power and economic control can be centralized, but they must at the same time be zoned effectively, or there will be some serious choking at the bottle-neck.

The Nazis profess to be welding a true German Folk out of the confusion of social and economic groupings, but their job seems to be also one of fashioning an integrated state structure. Indeed, the class consciousness which the Nazis abhor may remain, and the Nazis themselves may pass on. Nevertheless, they certainly will have made some contribution to the historic process of reforming the German *Reich*.

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The Liquidation of the German *Länder*. The liquidation of the German states (*Länder*) is now substantially complete.[1] A few traces of old snow from the Weimar winter still remain, but these are rapidly melting away under the sun of National Socialism. The ancient problem of *Reichsreform*, of *Bundesstaat* versus *Einheitsstaat*, has been solved in favor of the unitary, totalitarian *Reich*. The liquidating process may be studied under three separate, but closely related, topics. These are: the governmental reorganization and subordination of the *Länder* to the *Reich;* the unification of German law; and the territorial reform of the *Länder*.

1. *Governmental Reorganization and Subordination of the Länder.* The "coördination" of the *Länder* with the *Reich* really began in 1932. On July 20 of that year, President von Hindenburg, acting under Article 48 of the Constitution, appointed Chancellor von Papen national commissioner of Prussia. Although this seizure of power was subsequently limited by decision of the *Staatsgerichtshof*, the commissionership re-

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[1] This article covers developments down to November, 1935. For general accounts of the changes introduced under the Hitler régime, see Otto Meissner and Georg Kaisenberg, *Staats- und Verwaltungsrecht im Dritten Reich* (Berlin, 1935), and Mildred S. Wertheimer, "The Nazi Revolution in Germany," in *New Governments in Europe* (New York, 1934), pp. 126–260.

mained.[2] The next chancellor, General von Schleicher, likewise held the Prussian commissionership. Within a week after Hitler became chancellor (January 30, 1933), Hindenburg reappointed Papen commissioner of Prussia and invested him with those powers which the old Prussian cabinet had retained under the court decision of October 25, 1932.[3] This step made possible the dissolution of the Prussian *Landtag* and the holding of a new election on the same day as the *Reichstag* election of March 5, 1933. Following the election, national commissioners were appointed in all of the *Länder* which had not yet come under National Socialist control.[4]

On March 24, 1933, the new *Reichstag* passed, in the form of a constitutional amendment, the Enabling Act[5] which provided a legal foundation for further measures "coördinating" the *Länder*. By the terms of this act, the national cabinet was authorized for a four-year period to legislate without any constitutional limitations except that the position of the *Reichstag* and *Reichsrat* and the powers of the President were to remain undisturbed.[6] So far as the *Länder* were concerned, this meant that national cabinet laws could ignore the constitutional provisions relating to the legislative powers of the states, could disregard the principle that national legislation is normally executed by state authorities, and could decree territorial reorganization without constitutional amendment.

Starting with the Enabling Act, various national statutes were passed, culminating in the Law Concerning the New Structure of the *Reich* (January 30, 1934),[7] and the National Governor's Law (January 30, 1935).[8] By the first of these acts, the state legislatures were formally abolished, although in fact they had ceased to exist in 1933.[9] Before

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[2] See R. H. Wells "*Reichsreform* and Prussian *Verwaltungsreform* in 1932," in this REVIEW, Vol. 27 (1933), pp. 237–243.

[3] See Fritz Poetzsch-Heffter, "Vom Deutschen Staatsleben," *Jahrbuch des öffentlichen Rechts*, Vol. 22 (1935), pp. 158–164.

[4] *Ibid.*, pp. 129–138.

[5] *Gesetz zur Behebung der Not von Volk und Reich*, usually cited as the *Ermächtigungsgesetz*, *RGBl.*, I, p. 141.

[6] The *Reichsrat* was abolished in 1934. After Hindenburg's death, the presidential powers were transferred to Hitler as chancellor. The *Reichstag* has survived —chiefly as an "auditorium."

[7] *Gesetz über den Neuaufbau des Reiches*, usually cited as the *Neuaufbaugesetz*, *RGBl.*, I, p. 75. See F. A. Medicus, "Der Neuaufbau des Reichs nach dem Gesetz vom 30. Januar und der ersten Durchführungsverordnung vom 2. Februar 1934," *Archiv des öffentlichen Rechts*, new series, Vol. 25 (1934), pp. 62–82.

[8] *Reichsstatthaltergesetz*, *RGBl.*, I, p. 65. See Hans Pfundtner, "Das Reichsstatthaltergesetz vom 30. Januar 1935," *Reichsverwaltungsblatt*, Vol. 56 (1934), pp. 85–87.

[9] The *Vorläufiges Gesetz zur Gleichschaltung der Länder mit dem Reich*, March 31, 1933 (*RGBl.*, I, p. 153), provided that the state legislatures, with the exception of

January 30, 1934, the *Länder* still possessed independent power of legislation. This power was chiefly exercised by the state cabinets, in much the same way as national laws were enacted by the national cabinet.[10] However, the Law Concerning the New Structure of the *Reich* transferred the sovereign rights of the *Länder* to the *Reich* and declared the state governments subordinate to the *Reich* government. Hence, although the state cabinets may still legislate, they do so only by delegation and in the name of the *Reich*. State laws require the assent of the national minister to whose department they relate, and the national ministers may also direct that state decrees which have the force of law and which affect their branches of administration shall be submitted to them before being issued.[11] Moreover, since January 30, 1934, the *Länder* have lost all independent administrative authority. State administration, in so far as it has not been completely fused with national administration, is now indirect (*mittelbar*) *Reich* administration.

The office of national governor (*Reichsstathalter*) was first created by law in 1933[12] as a permanent substitute for the *Reich* commissionerships established in the *Länder* at the beginning of the new régime. With the exception of Prussia, where Hitler was given the powers of *Reichsstatthalter*, and of Bavaria, where special conditions prevailed, the national governors were all named from among the district leaders (*Gauleiter*) of the National Socialist party. An important link was thereby forged in tying together the party and the state. In the case of the smaller *Länder*, joint governorships were set up. Thus, the two Mecklenburgs

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the newly elected Prussian *Landtag*, should be dissolved and reconstituted according to the results of the *Reichstag* election of March 5. All Communist mandates were cancelled and, subsequently, the same procedure was applied to the Social Democratic seats. (*Verordnung zur Sicherung der Staatsführung*, July 7, 1933, *RGBl.*, I, p. 462.) The other political parties "voluntarily" went out of existence, and a law was passed prohibiting all parties except the National Socialist. (*Gesetz gegen die Neubildung von Parteien*, July 14, 1933, *RGBl.*, I, p. 479). State legislatures thus became one-party chambers. The dissolution of the *Reichstag* on October 14, 1933, automatically carried with it the dissolution of all the state legislatures. By Hitler's direction, no new state legislative elections were held, and no attempt was made to reconstitute the *Landtage* on the basis of the *Reichstag* election of November 12, 1933. See Medicus, *op. cit.*, p. 70.

[10] State cabinet legislation was authorized by the temporary *Gleichschaltungsgesetz* of March 31, 1933, *lex cit.*, Arts. 1–3.

[11] *Erste Verordnung über den Neuaufbau des Reiches*, Feb. 2, 1934, *RGBl.*, I, p. 81.

[12] *Zweites Gesetz zur Gleichschaltung der Länder mit dem Reiche*, April 7, 1933, *RGBl.*, I, p. 173. For a full discussion of this law, see Carl Bilfinger, "Das Reichsstatthaltergesetz," *Archiv des öffentlichen Rechts*, new series, Vol. 24 (1933), pp. 131–165. This law and its amendments were repealed by the *Reichsstatthaltergesetz* of January 30, 1935, *RGBl.*, I, p. 65. See Meissner and Kaisenberg, *op. cit.*, pp. 80–84. In the German Empire, Alsace-Lorraine had been under a *Statthalter*.

and Lübeck were united under a single governor; and the same was true of Oldenburg and Bremen; Brunswick and Anhalt; and Lippe and Schaumburg-Lippe.

The powers of the national governors are now chiefly defined in the *Reichsstatthaltergesetz* of January 30, 1935.[13] The *Reichsstatthalter* are appointed and removed by Hitler as leader and national chancellor, who likewise determines the territories over which they rule (Art. 9). They are the authorized representatives of the *Reich* in their respective districts (Art. 1). As political officers, the governors are charged with supervising the general lines of policy laid down by Hitler (Arts. 1, 2). In legislation, they prepare and promulgate the state laws with the approval of the national cabinet (Art. 6). As administrative officers, the *Reichsstatthalter* are subordinate to the national minister of the interior[14] and are subject to the direct orders of the other national ministers (Art. 3). Under the original law, the governor could not be a member of the state cabinet, but under the act of 1935 (Art. 4), he may be made the head of the state cabinet by Hitler. State cabinet members are appointed and dismissed by Hitler upon nomination of the governor (Art. 5). The appointment of all other state and national officials and the power of pardon are reserved to Hitler, but with right of delegation and sub-delegation (Arts. 7, 8). Except in Prussia, the higher state officials are nominated by the various national ministers and appointed by Hitler; the middle and lower ranks are chosen by the ministers.[15] In Prussia, all state officials are either nominated or appointed by the minister president (Göring).[16] To facilitate eventual fusion, state officials may be transferred to the national service or *vice versa*.[17]

The position of Prussia in the new scheme of government requires special explanation. By law, Hitler himself is vested with the powers of national governor, but he may delegate these to the minister president.[18] On April 11, 1933, Hitler appointed Göring to the office of minister president of Prussia.[19] By delegation, the minister president has practically the same powers as the national governors in the other *Länder*.[20]

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[13] *RGBl.*, I, p. 65.

[14] *Neuaufbaugesetz, lex cit.*, Art. 3.

[15] *Erlass des Führers und Reichskanzlers über die Ernennung und Entlassung der Landesbeamten*, February 1, 1935, *RGBl.*, I, p. 73. The ministers have delegated some of their appointing powers to the national governors. See, for example, the Minister of the Interior's *Anordnung über die Ernennung und Entlassung der Beamten der allgemeinen und inneren Verwaltung*, February 14, 1935, *RGBl.*, I, p. 201.

[16] The Prussian minister president has likewise delegated his appointing authority. See Göring's *Erlass über Beamtenernennungen*, February 6, 1935, *Preussische Gesetzsammlung*, p. 13.

[17] *Erste Verordnung über den Neuaufbau des Reiches*, February 2, 1935, Art. 5, *RGBl.*, I, p. 81.

[18] *Zweites Gesetz zur Gleichschaltung der Länder mit dem Reiche, lex cit.*, Art. 5; *Reichsstatthaltergesetz, lex cit.*, Art. 9.

[19] However, the Prussian commissionership was not formally abolished until the

The Prussian cabinet still exists, but has been interlocked with the *Reich* cabinet in such a way as to eliminate the old dualism prevailing under the Weimar constitution. Personal union of national and Prussian ministries was first employed,[21] but more recently, outright fusion has been undertaken. In Hitler's original cabinet, Hugenberg headed both the Reich and Prussian departments of economics and agriculture. Upon his retirement in June, 1933, the two ministries of economics were given to Schmitt (later succeeded by Schacht), and the two ministries of agriculture were entrusted to Darré. When a national ministry of education was created in May, 1934, Rust, the Prussian minister of education, was made head of it.[22] In the same month, Frick, the national minister of the interior, was appointed Prussian minister of the interior; and in June, Gürtner, the *Reich* minister of justice, was named Prussian minister of justice. By the end of June, 1934, all of the national and Prussian ministries had been interlocked through personal unions, with the exception of the finance departments, and even here, the Prussian minister of finance became minister without portfolio in the *Reich* cabinet.

Since then, the work of amalgamating the *Reich* and Prussian departments has begun. In the case of the ministries of justice, the fusion is now complete, the department being designated simply as the "*Reich* Ministry of Justice." Substantial progress has been made also in setting up combined ministries of economics, labor, transportation, agriculture, education, and the interior.[23] For example, the two interior ministries were united on November 1, 1934, under the title of the "*Reich* and Prussian Ministry of the Interior."[24] The only Prussian department which has not been combined with the corresponding *Reich* department is that of finance. Various property, budgetary, and taxation questions must be

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end of June. *Verordnung des Reichspräsidenten zur Wiederherstellung normaler Regierungsverhältnisse in Preussen*, June 30, 1933, *RGBl.*, I, p. 423.

[20] *Erlass des Führers und Reichskanzlers über die Ausübung der Befugnisse des Reichsstatthalters in Preussen*, January, 30, 1935, *RGBl.*, I, p. 75.

[21] Personal unions were authorized by the second *Gleichschaltungsgesetz*, *lex cit.*, Art. 5. See also the Prussian *Gesetz über die Gleichschaltung der Rechtsverhältnisse der Staatsminister mit den Rechtsverhältnissen der Reichsminister*, April 26, 1933, *Preuss. GS.*, p. 123.

[22] See Hitler's *Erlass über die Aufgaben des Reichsministerium für Wissenschaft, Erziehung, und Volksbildung*, May 11, 1934, *RGBl.*, I, p. 375.

[23] *Reichsministerialblatt*, Vol. 63 (1935), p. 433; *Ministerial-Blatt für die Preussische innere Verwaltung*, Vol. 96 (1935), p. 548.

[24] *Reichsministerialblatt*, Vol. 62 (1934), p. 681. For the present, the budgets of the two departments remain separate and the legal status of the officials is unchanged; but, in accordance with a decree of July 19, 1934 (*Erste Verordnung zur Vereinheitlichung und Verbilligung der Verwaltung*, *RGBl.*, I, p. 719), national officials are under obligation to give their services for Prussian affairs and *vice versa*.

solved before this union can be consummated. Under such circumstances, it is not too much to say that Prussia has been largely absorbed into the *Reich*.

The internal reforms of 1933 in the Prussian government are also significant for the development of the unitary *Reich*.[25] Locally elected legislative bodies were abolished and the leadership principle was widely introduced. In the Prussian provinces, all authority, both legislative and administrative, whether pertaining to state affairs or to the affairs of provincial self-government, was vested in the provincial governors (*Oberpräsidenten*).[26] The prerogatives of the *Oberpräsidenten* were further increased by a *Reich* decree of November 27, 1934,[27] giving them the powers of *Reichsstatthalter* in their respective provinces. This was an important step toward the reorganization of the *Reich* as a whole. When the *Reichsstatthaltergesetz* of January 30, 1935 was passed, it was one of the aims of that law to coördinate the office of national governor with that of Prussian provincial governor so far as direct national administration was concerned.[28] Consequently, in the *Reichsstatthalter* and in the Prussian *Oberpräsidenten*, the *Reich* now has a fairly uniform set of intermediate authorities (*Mittelinstanz*) standing between the central government and the various county and municipal authorities.

The process of liquidating the *Länder* is illustrated not only by the changes just described but by other examples as well. Here one may mention the abolition of the *Reichsrat*—the body which particularly represented the "state" character of the *Länder* and the federal nature of the *Reich*. However, after the passage of the Law Concerning the New Structure of the *Reich* (January 30, 1934), the position of the *Reichsrat* was anomalous; and accordingly, it was abolished by a cabinet law of February 14, 1934.[29] The administrative functions of the *Reichsrat* were transferred to the appropriate national ministers, and the Berlin "embassies" of the *Länder* to the *Reich* were eliminated. Another evidence of the "*Entstaatlichung*" of the *Länder* is found in the passing of dual citizenship. State citizenship has been set aside and there is now only a common *Reich* citizenship.[30] Still other proofs may be cited, such as the conversion of the French embassy at Munich into a general consulate; the termination of the Bavarian embassy to the Holy See and of the authority of the German ambassador at the Vatican to represent Prussia; and the abolition of a few special privileges still remaining to the states (or to some of them) with respect to the army and national defense, railway administration, and the establishment of banks of issue.[31] Such survivals from Bismarck's Second *Reich* no longer have a place in the Third *Reich*. The *Länder*, having been extinguished as states, are now merely organs or agencies of the central government.[32]

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[25] Arnold Köttingen, "Die Entwicklung des öffentlichen Rechts in Preussen," *Jahrbuch des öffentlichen Rechts*, Vol. 22 (1935), pp. 290–293, 300–312.

[26] *Gesetz über die Erweiterung der Befugnisse der Oberpräsidenten*, Dec. 15, 1933, *Preuss. GS.*, p. 477.

[27] *Zweite Verordnung über den Neuaufbau des Reichs*, *RGBl.*, I, p. 1190.

[28] The provincial governors are nationally appointed and are in the service of the *Reich* administration as well as that of Prussia and of the provinces. Their functions—national, state, and local—are substantially the same as those of the *Reichsstatthalter* and state cabinets in the non-Prussian *Länder*.

[29] *Gesetz über die Aufhebung des Reichsrats*, *RGBl.*, I, p. 89. Although the Enabling Act had safeguarded the *Reichsrat* from cabinet legislation, the Law Concerning the New Structure of the *Reich* was passed by the *Reichstag* and *Reichsrat* in the form of a constitutional amendment. Art. 4 of that law provided that the cabinet might make new constitutional law. Hence, the abolition of the *Reichsrat* by cabinet law may be justified under Art. 4. See Medicus, *op. cit.*, p. 80.

2. *The Unification of German Law.* National Socialist rule has been one of intense legislative activity. There is no phase of German life—political, economic, social, religious—which has not been vitally affected by the numerous statutes, decrees, and orders of the *Reich* government.[33] This legislation, which has been accompanied by the creation of new and highly centralized ministries such as aviation and propaganda, has gone far in making German law uniform throughout the country. Since space does not permit a discussion of the entire legislative record,[34] attention will be confined to certain fields where state lawmaking was once dominant and which are now the subject of national legislation.

In the Weimar constitution, local government was largely under the jurisdiction of the *Länder*. This is no longer true of the Third *Reich*. Municipal government, both of cities and of rural communities, has been standardized by the German Municipal Government Act (*Deutsche Gemeindeordnung*) of January 30, 1935,[35] and the previous state laws have been repealed. Municipalities are now under the supervision of the national Minister of the Interior. The *Deutsche Gemeindeordnung* is significant, not only for the unification of German law, but also as an important step in the governmental reorganization of the *Länder* and their subordination to the *Reich*. In addition, the various leagues of local government authorities have been dissolved and replaced by a single public law corporation, the *Deutscher Gemeindetag*, which is likewise under the supervision of the national Minister of the Interior.[36] County government is still subject to state law, but a national county government act is now in preparation.[37] As has already been indicated, the governments of the *Länder* themselves have been made substantially uniform and are being assimilated to the governments of the Prussian provinces in preparation for the creation of the future *Reichsgaue*.

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[30] *Verordnung über die deutsche Staatsangehörigkeit*, Feb. 5, 1934, *RGBl.*, I, p. 85. See also the *Reichsbürgergesetz*, Sept. 15, 1935, *RGBl.*, I, p. 1146.

[31] Poetzsch-Heffter, *op. cit.*, p. 154; *Deutsche Verwaltung*, Vol. 11 (1934), p. 153.

[32] See Dietrich Holtz, "Die Rechtsnatur der deutschen Länder," *Deutsche Verwaltung*, Vol. 11 (1934), pp. 195–197.

[33] For an excellent translation of the more important acts and decrees, see J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (rev. ed., Ann Arbor, 1934). See also the great collection, in seven volumes, edited by Hans Pfundtner, Reinhard Neubert, and F. A. Medicus, *Das neue Deutsche Reichsrecht* (Berlin, 1933 ff.); and the summary by Otto Schwarz and Erwin Noack, *Die Gesetzgebung des Dritten Reiches* (Berlin, 1934).

[34] The economic legislation alone is large in quantity and highly significant. See Mildred S. Wertheimer, "The Economic Structure of the Third *Reich*," *Foreign Policy Reports*, Vol. 10 (1934), pp. 182–192.

[35] *RGBl.*, I, p. 49. See also R. H. Wells, "Municipal Government in National Socialist Germany," in this Review, Vol. 29 (1935), pp. 652–658.

Almost equally important are the changes which have been made in the administration of justice.[38] In the German Empire and in the Weimar Republic, civil and criminal law and procedure were covered by national codes. There was also a national commercial code and a national law regulating the constitution of the courts in a uniform manner. However, with the exception of the nationally established *Reichsgericht* (the supreme court of judicature), the power to establish courts and to exercise sovereign rights in the administration of justice was left to the states.[39] By a series of laws and decrees reaching a climax in the act of January 24, 1935,[40] all jurisdiction and control were transferred to the *Reich*. Accordingly, on April 1, 1935, all state justice authorities became national authorities and all state judicial officials were converted into direct national officials. The process involved the taking over by the *Reich* of some 65,000 officials and 2,000 governmental offices. The *Reich* was likewise given charge of the revenues, expenditures, and property of the *Länder* used for judicial purposes. Thus, the administration of justice is now solely in the hands of one great, unified national department, analogous in centralization to the post-office or war departments. The unification of all law in this field is not yet complete, but rapid progress is being made, as is evidenced by the number of decrees still being issued. Code reforms along "German" rather than Roman law principles are also being undertaken. Moreover, there will eventually be a general reorganization of court districts, though this must await the final territorial reconstruction of the *Reich*.

Other important fields of state legislation in pre-Hitlerite Germany were those pertaining to religious and educational affairs. Although the Weimar constitution contained numerous provisions (Arts. 135–150) relating to these subjects, the legislative competence of the *Länder* was not thereby seriously curtailed. Under National Socialism, religion passed to the jurisdiction of the *Reich* and a great religious struggle was precipitated.[41] A national concordat between the *Reich* and the Holy See was ratified on September 12, 1933,[42] various articles of which are now in hot dispute. A national evangelical church, united at least on paper, was created, and was legally recognized by the act of July 14, 1933.[43] As the conflict deepened within the evangelical church, the national government was compelled again and again to intervene. The latest developments have seen the establishment of a national ministry for religious affairs[44] and the setting up of a special court for the decision of legal questions pertaining to the evangelical church.[45]

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[36] *Gesetz über den Deutschen Gemeindetag*, Dec. 15, 1933, *RGBl.*, I, p. 1065. See also F. M. Marx, "The New Roof over German Local Government," *National Municipal Review*, Vol. 23 (1934), pp. 255–257, 270.

[37] *Der Gemeindetag*, Vol. 29 (1935), pp. 184–185.

[38] See Meissner and Kaisenberg, *op. cit.*, pp. 282–295.

[39] See F. F. Blachly and M. E. Oatman, *The Government and Administration of Germany* (Baltimore, 1928), Chap. 13.

[40] *Drittes Gesetz zur Überleitung der Rechtspflege auf das Reich*, *RGBl.*, I, p. 68.

Closely connected with religion is the educational problem. Because of the complications arising from this connection, little progress was made before 1933 in national legislation concerning schools.[46] The National Socialists have also had to proceed carefully, and unification is still far from achievement. However, a national ministry of education has been formed, various laws and decrees (such as those relating to the higher schools and universities) have been issued, and a strenuous effort has been made to infuse the whole educational system with the spirit of the Third *Reich*.[47]

In addition to local government, justice, religion, and education, the remaining fields of state legislative activity are becoming more and more nationally unified. Thus, for example, it has been announced that comprehensive national legislation concerning public officials will soon be enacted.[48] This will apply to public officials of every description, national, state, and local; will make them directly or indirectly officials of the *Reich;* and will repeal all state laws on the subject. Numerous other laws or projected laws might be cited which take over fields formerly covered, or largely covered, by legislation of the *Länder.*[49]

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[41] See C. S. MacFarland, *The New Church and the New Germany* (New York, 1934), and P. F. Douglass, *God Among the Germans* (Philadelphia, 1935).

[42] *Konkordat zwischen dem Heiligen Stuhl und dem Deutschen Reiche, RGBl.*, II, p. 679.

[43] *Gesetz über die Verfassung der Deutschen Evangelischen Kirche, RGBl.*, I, p. 471.

[44] *Erlass über die Zusammenfassung der Zuständigkeiten des Reichs und Preussens in Kirchenangelegenheiten*, July 16, 1935, *RGBl.*, I, p. 1029.

[45] *Gesetz über das Beschlussverfahren in Rechtsangelegenheiten der Evangelischen Kirche*, June 26, 1935, *RGBl.*, I, p. 774.

[46] See R. H. Wells, *German Cities; A Study of Contemporary Municipal Politics and Administration* (Princeton, 1932), p. 156.

[47] See I. L. Kandel, "Education in Nazi Germany," *Annals of the American Academy*, Vol. 182 (Nov., 1935), pp. 153–163; and an unsigned note, "The Development of German Education, 1934–35," *International Education Review*, Vol. 4 (1935), pp. 297–300.

[48] On National Socialist civil service legislation, see F. M. Marx, "German Bureaucracy in Transition," in this REVIEW, Vol. 28 (1934), pp. 467–480; and the same author in *Civil Service Abroad* (New York, 1935), pp. 260–274.

3. *Territorial Reform of the Länder.* The problem of territorial reform of the *Länder* has been one of exceptional difficulty, even for National Socialism. In spite of much discussion, both openly and behind the scenes, little action has resulted and the "ancient landmarks" largely remain. The accomplishments thus far may be noted briefly. Through the initiative of their joint governor, Mecklenburg-Schwerin and Mecklenburg-Strelitz were united on January 1, 1934, into one state.[50] Upon the return of the Saar to Germany in 1935, the territory was organized as a single unit under a national commissioner pending the final reorganization of the *Reich* as a whole.[51] Finally, minor boundary corrections have been made between Bavaria and Württemberg, and between Prussia and its neighbors—Oldenburg, Hamburg, Mecklenburg, Anhalt, Hesse, Lippe, and Schaumburg-Lippe.[52]

The obstacles to thorough territorial reform are twofold. In the first place, it would involve the partition of Prussia and probably also of Bavaria. There are many who, like the late President Hindenburg, believe that a strong and undivided Prussia is the best guarantee of a strong *Reich.* In the second place, the chief governmental offices of the *Länder* are manned by National Socialists; they naturally have little desire to see their positions legislated out of existence. General Göring can hardly wax enthusiastic over a division of Prussia which would deprive him of his post as head of that state. Because of differences of opinion within the party on the subject of territorial reform, immediate action is doubtful. These differences are reflected in the public statements of such men as Dr. Frick, the national Minister of the Interior, and Minister President Göring.

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[49] See, for example, *Gesetz zur Überleitung des Forst- und Jagdwesens auf das Reich,* July 3, 1934, *RGBl.*, I, p. 534; *Gesetz zur Überleitung des Bergwesens auf das Reich,* March 1, 1935, *RGBl.*, I, p. 315; *Gesetz über die Vereinheitlichung des Gesundheitswesens,* July 3, 1934, *RGBl.*, I, p. 531; *Gesetz über die Landespolizei,* March 29, 1935, *RGBl.*, I, p. 460; and the numerous laws and decrees summarized in Schwarz and Noack, *op. cit.*, *passim.*

[50] *Gesetz über die Vereinigung von Mecklenburg-Strelitz mit Mecklenburg-Schwerin,* December 16, 1933, *RGBl.*, I, p. 1065. Under the German Empire, these two states had separate grand-dukes but a common legislature. They were, in effect, "political Siamese twins." After the Revolution of 1918, the two Mecklenburgs were entirely separated.

[51] *Gesetz über die vorläufige Verwaltung des Saarlandes,* January 30, 1935, *RGBl.*, I, p. 68. Before the Versailles Treaty, the Saar belonged partly to Prussia and partly to Bavaria.

[52] With one exception, these boundary corrections were made in 1934 and 1935. See *RGBl.*, II, *passim.* The Prussia-Lippe boundary correction was completed before Hitler came to power. See *Preuss. GS.*, 1931, p. 118. For other territorial changes under the Weimar Republic, see R. H. Wells, *German Cities,* pp. 16–21.

Frick received considerable publicity when he announced that territorial reform would be decreed on January 30, 1935, as a fitting climax to two years of National Socialist rule. The announcement was premature, for, with the exception of the Saar, not a boundary stone was moved. According to Frick,[53] Germany is to be divided into approximately 20 districts, or *Reichsgaue*, each headed by a *Reichsstatthalter*. The boundaries of the *Gaue* will be determined by economic, social, military, and geographical factors, and not by dynastic and historical considerations. The average population of the districts will be from three to four million people. The *Gaue* are to be public law corporations and, although under the direct control of the *Reich*, are to have the possibility of district self-government in much the same way as now enjoyed by the Prussian provinces. Thus excessive centralization will be avoided.

The opinions of Göring were set forth in a speech made to the Prussian Council of State (*Staatsrat*)[54] on June 18, 1934.[55] According to Göring, *Reichsreform* is first of all a Prussian question. The other *Länder* already more or less have the shapes of future *Reichsgaue*, but Prussia must be divided into a number of districts. This cannot be done until the unity of the *Reich* and Prussian cabinets has been established. Göring asserted that Hitler had entrusted him with the task of coördinating the *Reich* and Prussian cabinets and, "within a decade," of dividing Prussia into such *Reichsgaue as Prussia herself shall designate*. Some Prussian provinces, such as Pomerania, Brandenburg, and East Prussia, already have the natural forms of the future districts. Silesia, too, should not prove a great obstacle. Beyond that, the difficulties increase. However, it is self-evident that the boundaries of the existing provinces will be considered in making the *Reichsgaue*.

The present situation, then, is this. Counting the Saar, there are 17 *Länder*.[56] Prussia, the largest state, with three-fifths of the area and population of Germany, is divided into 13 provinces, which in size compare favorably with the other *Länder*.[57] Therefore, the number of major territorial units, both Prussian and non-Prussian, is now 29.[58] Is the number to be reduced to 20 as Frick proposed? The ultimate decision rests with Hitler himself. Meanwhile, even without boundary changes, the evidence presented in this article indicates that the liquidation of the *Länder* is substantially accomplished.

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[53] Wilhelm Frick, *Der Neubau des Dritten Reichs* (Berlin, 1934). This is a speech delivered by Frick to the officers of the *Reichswehr* on November 15, 1934.

[54] The *Staatsrat* is now an appointed, advisory body. *Gesetz über den Staatsrat*, July 8, 1933, *Preuss. GS.*, p. 241.

[55] *Deutsche Verwaltung*, Vol. 11 (1934), p. 187.

[56] The Saar is counted above although technically it is not a *Land*. The *Länder*, arranged in order of size, are Prussia, Bavaria, Württemberg, Mecklenburg, Baden, Saxony, Thuringia, Hesse, Oldenburg, Brunswick, Anhalt, Lippe, Hamburg, Schaumberg-Lippe, Lübeck, and Bremen.

[57] The Prussian provinces are East Prussia, Pomerania, Brandenburg, Lower Silesia, Upper Silesia, Prussian Saxony, Schleswig-Holstein, Hannover, Westphalia,

Roger H. Wells.

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the Rhine Province, and Hesse-Nassau. For most purposes, the city of Greater Berlin and the Hohenzollern Territory in South Germany have the status of provinces. The Border Province is not listed because its administration has recently been merged with that of Brandenburg. See *Gesetz über die Vereinheitlichung der Verwaltung der Provinz Brandenburg und der Provinz Grenzmark Posen-West Preussen*, June 27, 1935, *Preuss. GS.*, p. 87.

[58] In the recent revision of the *Reichstag* election law, the number of election districts and unions of districts was left unchanged. There are still 35 *Wahlkreise* and 16 *Wahlkreisverbände*. See *Gesetz zur Änderung der Anlage des Reichswahlgesetzes*, Sept. 5, 1935, *RGBl.*, I, p. 1137.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

By vote of the Executive Council, the thirty-second annual meeting of the American Political Science Association will be held in Chicago, with Professor Harold F. Gosnell, of the University of Chicago, as chairman of the committee on local arrangements. The new Committee on Policy of the Association, authorized at the Atlanta meeting of last December, consists of the following persons: Arthur N. Holcombe (chairman), Harvard University; Francis W. Coker, Yale University; Clyde L. King, University of Pennsylvania; John M. Gaus, University of Wisconsin; Frank G. Bates, University of Indiana; Finla G. Crawford, Syracuse University; and Herman C. Nixon, Tulane University. The committee on program for the 1936 meeting is made up of Cullen B. Gosnell (chairman), Emory University; Clyde Eagleton, New York University; Joseph P. Harris, Washington, D.C.; Peter Odegard, Ohio State University; and James Hart, Johns Hopkins University. The committee to nominate officers for 1937 consists of Orren C. Hormell (chairman), Bowdoin College; Thomas S. Barclay, Stanford University; Robert E. Cushman, Cornell University; James W. Manning, University of Kentucky; and Clarence A. Berdahl, University of Illinois. At his own request, Charles A. Beard has retired as a representative of the Association in the Social Science Research Council. His place has been taken by Lindsay Rogers, of Columbia University. The new Committee on Policy held its first meeting at Philadelphia on February 29.

At the annual meeting in Chattanooga in December, Dr. Charles H. McIlwain, Eaton professor of the science of government at Harvard University, was elected president of the American Historical Association.

President Harold W. Dodds, of Princeton University, delivered the address at the convocation exercises of the University of Pennsylvania on February 22 and received an honorary degree of doctor of laws.

Professor J. Ralston Hayden returned to his post at the University of Michigan at the opening of the second semester, after serving two years as vice-governor of the Philippines.

Professor Ralph E. Himstead, of Syracuse University, has accepted the position of general secretary of the American Association of University Professors. He will take charge of the Association's Washington office on June 1.

Dr. Henry Reining, Jr., professor of politics at Princeton University, has been appointed educational director of the National Institute of Public Affairs in Washington, and will be in charge of the Institute's program of internship training.

Professor Elmer D. Graper, of the University of Pittsburgh, has been appointed by the commissioners of Allegheny county a member of the board for the assessment and revision of taxes.

In January and February, Professor Thomas S. Barclay, of Stanford University, served as a member of the staff of the Des Moines Public Forums, lecturing and conducting discussions on topics connected with party politics.

Professor Harold R. Bruce, of Dartmouth College, was one of the lecturers at the December Institute meeting of the Los Angeles Teachers' Association. He delivered six lectures on the general subject of "The Contemporary United States," covering the economic, governmental, and political situation at the present time.

Professor Russell M. Story, of Pomona College, will teach at the University of Illinois during the coming summer session.

Professor James W. Martin, of the University of Kentucky, research director of the American Legislators' Association's interstate commission on conflicting taxation in 1934–35, has been appointed chairman of the Kentucky state tax commission.

Professor Walter H. C. Laves is on leave of absence from Hamilton College until September 1, during which time he is acting as director of the Mid-West office of the League of Nations Association, located in Chicago. His courses at Hamilton are in charge of Dr. Henry Janzen, and Professor J. Q. Dealey, Jr., is serving as head of the department.

Professor William L. Bradshaw, having resigned as executive secretary of the Missouri Association of Mayors and Other Municipal Officials, is again teaching full time at the University of Missouri. For more than two years, he devoted part of his time to municipal league work.

Dr. W. W. Pierson, Jr., has been appointed head of the recently created department of political science at the University of North Carolina. He will continue to serve also as dean of the Graduate School.

Professor J. B. Shannon, of Transylvania University, and Dr. Lee S. Greene, of the University of Wisconsin, have recently resigned their respective positions in order to accept posts with the Tennessee Valley Authority.

At Harvard University, a research grant has been made to Professors

Arthur N. Holcombe and E. Pendleton Herring for a study of "Qualifications of Federal Commissioners."

While on leave from Ohio Wesleyan University during the academic year 1936–37, Professor Ben A. Arneson will be visiting professor and acting head of the department of political science at the American University.

Professor Charles S. Hyneman, of the University of Illinois, has been made a member of a committee appointed by the state department of education to direct a program of revision of the social science curriculum in the Illinois public schools.

Professor Leland M. Goodrich, of Brown University, is on sabbatical leave during the second semester, and will be in Europe until September, with headquarters at Geneva. In his absence, Mr. Robert M. Goodrich, executive director of the Providence Governmental Research Bureau, is giving the course in municipal government, thus relieving Professor Matthew C. Mitchell, who in turn has taken over some of the courses regularly given by Professor Goodrich.

Dr. Payson S. Wild, Jr., instructor and tutor in government at Harvard University, has been promoted to an assistant professorship.

Dr. Albert Lepawsky, research associate in political science at the University of Chicago, and during the past year head of the research division of the law department of the city of Chicago, has been made assistant director of the Public Administration Clearing House.

Dr. Chesney Hill, of the University of Illinois, has been appointed assistant professor of political science and public law at the University of Missouri. He will have charge of the courses in international law, relations, and organization.

Mr. Harald Bergerson has resigned from the staff of the Bureau of Governmental Research at the University of Washington in order to accept an instructorship in political science at the University of Idaho.

"Business Education for Everybody" will be the general topic of the Fourth Conference on Business Education to be held at the University of Chicago on June 25 and 26, under the auspices of the School of Business.

Dr. V. O. Key, Jr., is on leave from the University of California at Los Angeles and is at present a member of the Washington staff of the Committee on Public Administration of the Social Science Research Council. Dr. Winston W. Crouch, who taught at Pomona College during the first semester, has been appointed lecturer in political science for the second semester at the University of California at Los Angeles, and Mr. J. W. Robinson, who will be a candidate for the doctor's degree at Stanford University in June, has been appointed associate.

During the past year, the department of government at Indiana University has performed a number of services for national, state, and local governments. Professor Frank G. Bates and Mr. Clyde F. Snider acted as technical advisers to the governor's commission on governmental efficiency and economy. Professor Bates also acted in an advisory capacity to the special committee appointed by the governor to study the taxation system of the state. Dr. Pressly S. Sikes made a classification of all positions in the state government, which has been put into effect by Governor McNutt. At the present time, Mr. Sikes is revising the city ordinances of Bloomington. During the past two years, Professor Ford P. Hall has acted as the special representative for Indiana of the United States Department of Labor. Twice during this period he has had charge of the examinations and oral interviews for applicants for positions in the Indiana state employment service. Miss Wilma Langdon, of the department of government, has assisted in this work.

At Wayne University, Detroit, Professor Lent D. Upson has been made responsible for the organization of a School of Social Work which will be opened next year. Professor James H. Russell, who has been associated with the department of political science for some nineteen years, has resigned; Mr. Charles W. Shull has been promoted to an assistant professorship; and Mr. Lawrence Michelmore, formerly a graduate student at Harvard, has been added to the staff.

The general subject for consideration at the thirtieth annual meeting of the American Society of International Law, to be held in Washington on April 23–25, is "The Rôle of International Law in Peaceful Change." Among persons who will present papers are Professors Parker T. Moon of Columbia University, Hessell Yntema of the University of Michigan, Quincy Wright of the University of Chicago, John B. Whitton of Princeton University, Amry Vandenbosch of the University of Kentucky, and Norman MacKenzie of the University of Toronto.

A group of exiled scholars has lately formed in Paris a bureau of research and documentation which offers its services at reasonable rates to scholars outside of France for research in historical, economic, juridical, and other fields. The bureau has research correspondents outside of France and offers assistance in the buying of books and as a general intermediary in intellectual activities between scholars. Communications may be addressed to Dr. V. Modigliani, secretary of the Bureau of Research and Documentation, 8 Boulevard Ornano, Paris (XVIII), France.

An Institute of Public Affairs held at the Southern Methodist University, Dallas, on March 10–14 had as its general subject "The Southwest in International Affairs." Among participants were Dean Charles W. Pipkin of Louisiana State University, Mr. Clark M. Eichelberger of the League of Nations Association, Mr. Peter Molyneaux, editor of the *Texas Weekly*, and Professors Royden J. Dangerfield of the University of Oklahoma, H. C. Nixon of Tulane University, and J. Lloyd Mecham and Charles W. Hackett of the University of Texas.

The eighth annual institute of government will be held at the University of Southern California on June 15–19. Sections will be organized on the administration of justice, public personnel administration, planning, and numerous other subjects, and directors will include Professors John M. Pfiffner and Carlton C. Rodee of the University of Southern California, and Emery E. Olson of the American University.

The fifth annual Mid-West Institute of International Relations, arranged by the American Friends Service Committee, Northwestern University, and a committee of Evanston citizens, will be held at Northwestern University during the period June 22 to July 3. Those who will deliver lectures and otherwise take part in instruction include Professors Garfield V. Cox of the University of Chicago, Heber Harper of Columbia University, Charles S. Johnson of Fisk University, and William M. McGovern of Northwestern University, Senator James P. Pope of Idaho, Mr. Norman Thomas, and the Japanese Christian leader, Toyohiko Kagawa.

A Public Affairs Committee, financed during its first year by the Maurice and Laura Falk Foundation and designed to serve as a medium for disseminating the findings of existing research organizations, has lately been established with the following membership: Raymond L. Buell (chairman), Foreign Policy Association; Harold G. Moulton (treasurer), Brookings Institution; Lyman Bryson, Columbia University; Evans Clark, Twentieth Century Fund; Frederick V. Field, Institute of Pacific Relations; William T. Foster, Pollak Foundation; Luther Gulick, Institute of Public Administration; Felix Morley, the *Washington Post;* George Soule, National Bureau of Economic Research; with Francis P. Miller as executive secretary. The committee proposes to publish numerous pamphlets, which will be sold at nominal prices at the committee headquarters, National Press Building, Washington, D.C.

The faculty of law of Northwestern University, administering the income of the Charles Clarence Linthicum Foundation, announces that the sum of one thousand dollars and a bronze medal, as a first prize, and not more than five sums of one hundred dollars each, as second prizes with honorable mention, will be awarded to the authors of the best monographs submitted by March 1, 1937, on the subject of "carrier liability in national and international air commerce (including liability to passengers, shippers, and others for personal injuries and property damage)."

For a period of ten weeks, from June 22 to August 29, the University of California will conduct intensive instruction in the Russian language—one course for beginners, and one for persons with some knowledge of Russian. This work is offered by the University in coöperation with the Institute of Pacific Relations, as a continuation of the inter-university project which began with the Russian Language Section of the Harvard Summer School of 1934 and was carried on at Columbia during the summer of 1935. The courses are intended for persons of exceptional qualifications who have a specific need for the language as a tool for use in some field of scholarship. The Summer Session Office of the University of California is prepared to furnish detailed information upon request.

The United States Conference of Mayors has now established a permanent secretariat in the United States Conference of Mayors' building, 730 Jackson Place, Washington, D.C. The national office is under the direction of Dr. Paul V. Betters, executive director of the Conference. Activities of the Conference since the annual meeting in November have been devoted mainly to the formulation of a general work-relief program which might be followed by the federal government during the fiscal year 1936–37. On January 13, the Conference, on the basis of a study of the relief situation in 150 of the larger cities, proposed to Congress a continuation of the present WPA work program during the next fiscal period—on a basis of giving employment to 3,000,000 *bona fide* relief persons. The estimated cost of this program was set at $2,340,000,000. This figure presented by the Mayors' Conference was the first indication of the cost of relief work for 1936–37, relief being the only major item not included in the President's budget. Among recent reports published by the Conference is *Recent Federal-City Relations*, a volume describing the various federal programs since 1932 which have affected and concerned the cities of the country. Unemployment relief, public works, law enforcement, finance, and other federal activities are discussed in this report. Closely associated with the Conference at its national headquarters is the Institute of Municipal Law Officers, an organization which includes the law departments of the larger cities. The Institute carries on a program of activities designed to further the interchange of information in the field of municipal law. Mr. Sherwood L. Reeder has been appointed executive director, the president being Mr. Henry E. Foley, corporation counsel of Boston.

Walter James Shepard, professor of political science and dean of the College of Arts and Sciences at Ohio State University since 1928, died on January 25 of a heart attack induced by a strenuous effort to extricate his automobile from a snowdrift. Cut off in the prime of life, his death is felt as a crushing blow to his many friends, and especially to the university to which he has rendered distinguished service, and to political science, its study and practice. President of the American Political Science Association in 1934, he was long known to his colleagues in their annual meetings as an active participant in the debating of policy, and more especially in the conciliatory combining of diverse opinions and the fruitful achieving of results that should be of solid, widely acceptable validity. Having served not only Ohio State University (1909–1911, 1921–23, 1928–1936), but also the University of Missouri (1911–1921), Washington University (1923–1924), and the Robert Brookings Graduate School of Economics and Government (1924–1928), he had an unusually wide acquaintance with faculties and students and with nonacademic men and women of public spirit. Affable, friendly, patient, he spent his time without stint on the needs of others, helping students to find themselves, immature scholars to find teaching positions and opportunities to contribute to scholarship, citizens to coöperate in democratic action, political scientists to advance learning. In addition to numerous articles in this REVIEW (and others) and in the *Encyclopædia of the Social Sciences*, his outstanding scientific contribution was the translating and editing, in collaboration with George H. Sabine, of H. Krabbe's *The Modern Idea of the State.* It has often been suggested that the elaborate Introduction to this work was of such outstanding value as a piece of independent political thought that it was eminently worthy to stand by itself, whatever might be the importance of the work of the Dutch thinker. Dean Shepard's most active teaching interest had been in the field of political theory, its history and especially its present-day applications. A liberal democrat, always optimistic and forward-looking, he free-thinkingly examined, in his presidential address of 1934, the necessities and implications of democracy at the present day. He sought the means of realizing "the good life," and was fearless in grasping the nettle of present-day political conditions. Chairman of the planning board of the state of Ohio, he was intensely interested in what his own (adopted) state might do in solving urgent problems of economics, administrative reorganization, and education. Much of his time and attention in the informal lobby conferences at Atlanta and Chattanooga in December was devoted to a project of coöperative thinking that should lead to a published Plan. Public trust in brains and utilization of expert capacity in solving public problems, he felt, must be given institutional organization; democracy must think ahead; political science must not be content with recording and describing. He summoned his disciples and friends to "seize the torch."—HENRY R. SPENCER.

BOOK REVIEWS AND NOTICES

Legislative Problems: Development, Status, and Trend of Treatment and Exercise of Lawmaking Powers. By Robert Luce (Boston and New York: Houghton Mifflin Company. 1935. Pp. vi, 762.)

In this volume, Mr. Luce brings to a conclusion his exhaustive study, in four volumes, of the legislative branch of American governments, issued under the general caption of "The Science of Legislation." The titles of the other three volumes are: I, *Legislative Procedure: Parliamentary Law and the Course of Business in the Framing of Statutes;* II, *Legislative Assemblies: Their Framework, Make-up, Characteristics, Habits, Manners;* III, *Legislative Principles: The History and Theory of Lawmaking by Representative Government.* In this series of volumes, Mr. Luce has made one of the most notable contributions to political science that has appeared in recent years. They have exceptional value as coming from one who not only is a deep student of modern political conditions and problems and thoroughly familiar with the literature of the subject, but has had a long practical experience in the legislative field, having been a member of the Massachusetts legislature for nine years, a member of the constitutional convention of that state which sat in 1917–19, and a member of the national House of Representatives for sixteen years, besides holding other high political offices in his state.

Of the four volumes, the one now under review is probably the most valuable to the general student, dealing as it does with the general position of the legislative branch in our scheme of government and its relations to the other branches, rather than with the technical phases of the internal organization and operation of legislative bodies. The broad scope of the book can be seen from the following enumeration of some of its chapter headings: "The Separation of Powers"; "Judges as Legislators"; "President and Congress"; "Rise of the Executive"; "The Cabinet System"; "Responsible Government"; "Administrative Legislation." There are, indeed, few subjects of present-day concern as regards the practical workings of our political system that are not subjected to acute examination. Especial interest attaches to the author's careful consideration of the relations existing, and which in his opinion should exist, between the legislature and the executive, and the significance of the increased influence of the latter in guiding and determining action by the former.

The method followed by the author in taking up each of these and many other subjects for examination is, first, to state the problem. This is followed by a brief historical sketch of its rise and of the action taken in reference to it in England, in the colonies, in the federal government, and in the state governments down to the present time, with references to European governments when pertinent. This done, the problem, in its modern bearing, is subjected to analysis and the author's judgment as to the manner in which it should be handled is set forth with supporting argument. In doing the latter, the author states fairly the position and arguments of those holding a contrary opinion. The treatment, in a word, is not unlike that followed by the Supreme Court in handing down its decisions upon important matters of constitutional interpretation.

A feature of interest in this method of treatment is the care that has been taken to give the opinions held in the past by our leading statesmen and commentators on our political institutions, with the result that the work makes a contribution to the development of American political thought that no student of this branch of political science can afford to ignore.

Did space permit, it would be of interest to set forth the author's position on questions upon which students and the general public are now acutely divided. We shall have to content ourselves, however, with the statement that the author takes sharp issue with the present reviewer in respect to the responsibility of legislative bodies for supervising the administration through the use of such agencies as the Comptroller-General of the United States and committees of inquiry; that he is, in general, opposed to the system of congressional investigation of the conduct of public affairs; and that he views with concern, if not alarm, the recent growth in power and influence of the President. It is encouraging, however, that, after an exceptionally penetrating examination of the position at one time strongly held by a group of American students, headed by Woodrow Wilson, that the English system of responsible government was one that could with advantage be incorporated into our system, Mr. Luce could sum up with the following:

"To conclude, measured by contentment, the English system as a whole is the worse off. It is the target for criticism more plentiful and more severe than the separation of powers gets in the United States. In my judgment, the English criticism of English methods is deserved. I cannot understand how any man familiar with Congress can peruse such a volume as the *Minutes of the Select Committee on House of Commons Procedure* (1914) and rise from it without the conviction that the system of ministerial responsibility is far inferior to the American system in point of legislative efficiency. With us, the legislature legislates. However imperfect the process, it is better than that of habitual acquiescence with occasional revolt. By the use of committees free to exercise independent judgment, we energize large numbers of men who in Parliament would be idle and helpless. We enlist individual responsibility. Thus we do actually bring to bear upon the problem of government many minds, and whether each contributes little or much, the sum total of wisdom thus amassed is worth the while. Surely it better reflects the will of the citizens who make up the Republic."

W. F. WILLOUGHBY.

Washington, D.C.

The Interstate Commerce Commission of the United States. Part III, Vol. A. BY I. L. SHARFMAN. (New York: The Commonwealth Fund. 1935. Pp. xii, 684.)

This is the third of Professor Sharfman's scholarly volumes on one of the most important of our administrative tribunals. Volumes I and II of the study, respectively, dealt with the legislative basis of the Commission's authority and with the scope of its jurisdiction. The present volume and another which is to follow are largely concerned with the character of the Commission's activities. After dealing in a general way with the extent and diversity of the Commission's work, Volume III gives a detailed analysis and appraisal of its policies and practices in the spheres of valuation, organization, and control over finances and rates.

In this study, Professor Sharfman enters a field of investigation which is generally sadly neglected, since most of the other writers on the Interstate Commerce Commission have devoted themselves chiefly to questions of organization and jurisdiction. Yet, in the opinion of the reviewer, from this relatively unexplored field the facts will be harvested which will make possible an objective evaluation of the functions performed by the Commission.

The nature of these functions—administrative legislation and administrative adjudication—stands out clearly as Dr. Sharfman examines them. The Interstate Commerce Commission interprets the statutes under which it operates; organizes itself for its work; lays down methods for its own procedure; decides upon classes of facts to be considered and upon principles of law and economics to be applied; endeavors to reconcile its opinions with those of the courts; exercises a certain degree of independent discretion; and develops public policy. The present study examines the ways in which it does all these things. It also considers the adoption of standards and criteria, the processes by which the theories and viewpoints of individual members are blended into a composite theory, and the development of procedure. The reviewer has never seen a book which compares with this one in the completeness and clarity of its treatment of these topics.

A very valuable feature of the volume is the careful analysis of some of the questions raised and issues mooted when decisions were to be made by the Commission as to the various matters listed in the preceding paragraph. This analysis is made even more valuable by the author's critical comments.

The profound research required for the preparation of this book and the thoroughness with which vast quantities of material have been digested are shown on every page. The study illustrates what may be accomplished in the way of research by a mature student with a sufficiently broad training in several fields to enable him to handle the material with which he is confronted. It also shows what may be done by the long, steady application of one person to a large undertaking.

The books of this series, because of their thoroughness and comprehensiveness, are intended for those who really wish to know and who are willing to spend some time in learning. They are not meant for persons who believe that a great social experiment can be treated thoroughly in a little monograph which can be read in an hour or two before an open fire. The style is clear and flowing, but the substance demands thought. These books should be studied by every legislator, administrative officer, judge, and lawyer concerned with the process of the regulation of business and industry. It is through the wide dissemination of the type of information found in such books that a correct public policy can be formed.

The Commonwealth Fund is to be congratulated upon the results obtained by Professor Sharfman, through its aid in supporting this scholarly venture.

Frederick F. Blachly.

Brookings Institution.

Roger B. Taney. By Carl Brent Swisher (New York: The Macmillan Company. 1935. Pp. xxvii, 608.)

Roger B. Taney, Jacksonian Jurist. By Charles W. Smith, Jr. (Chapel Hill: University of North Carolina Press. 1936. Pp. xi, 242.)

Although Mr. Swisher's *Taney* is not the notable contribution to knowledge that his *Field* was, it is a work which was well worth doing and which has been well done. In a measure, the volume suffers from the defects of its good qualities. Taney's personality has always appeared as lacking in color and vitality, and Mr. Swisher's cool, impersonal style does not dispel the impression. Also, the book—like the Irishman's board—is "too long at one end." Mr. Swisher desired, no doubt, to show how Taney became the kind of man he appeared as Chief Justice to be, and how he came by the principles which he sought to weave into American constitutional law. That, of course, was a worthy object; but was it necessary, in order to achieve it, to enter in such detail into "the old, unhappy, far-off things and battles long ago" of Jackson's war on the Bank? Actually, nearly as many pages are given to the decade 1827 to 1837 as to the ensuing twenty-seven years of the chief-justiceship.

On the whole, Mr. Swisher makes out a good case for the general consistency and sincerity of motivation of Taney's career, and by the same sign lays to rest the charge of excessive pliability to Jackson's purposes. He also shows (pp. 506–507) that Taney had set forth as Attorney-General substantially the same theory of the status of Negroes under the Constitution as that which furnished the basis, twenty-five years later, of his opinion in the Dred Scott case. Much more striking, however, is Mr. Swisher's revelation of the intensity of Taney's sympathy with the South. Northern domination in the Union, he remarks penetratingly, Taney regarded as "unconstitutional." "He preferred secession by force of arms to submission to it" (pp. 492–493; 503–504). Such an attitude offers an interesting parallel to that of some of our modern *laissez faire* judges. They are sure that *governmental* domination is "unconstitutional." The only problem is, how to ferret out words in the Constitution capable of expressing this conclusion, which accordingly becomes the *terminus ad quem* of all their reasoning.

This question arises: Ought not Taney, once he saw that the country was certainly embarked on the enterprise of crushing secession, to have resigned from the Bench? Certainly the rest of his years were days of futility and humiliation. Perceiving that he did not intend to resign, the Administration nullified his power for mischief by temporarily enlarging the Court to ten members. "It may be argued," says Mr. Swisher, "that this was not a *bona fide* (*sic*) instance of packing the Court for the sake of point of view, but the fact remains that one of the reasons grew out of doubts as to the loyalty of the older members" (p. 566).

One might almost suppose that Mr. Smith had designed his small volume as a complement to Professor Swisher's work, so well does it perform this function. Here will be found an excellent exposition of Chief Justice Taney's principles of constitutional interpretation, grounded on a brief but sufficient study of his chief cases and projected against an adequate background of political and legal theory. Mr. Smith is particularly good in what he has to say regarding Taney's contribution to the doctrine of the police power and his conception of the state as a legal state. In the latter connection, however, I have two criticisms. Mr. Smith overlooks the crucial consideration that a large part of Maryland was at the time of Merryman's case fairly to be regarded as a *seat of war*, and hence within the President's jurisdiction as commander-in-chief. Mr. Smith might also have pointed out the contradiction between the position advanced in Jackson's veto message of July 10, 1832, of the constitutional portions of which Taney was the author (Swisher, pp. 193–195), regarding the finality of judicial interpretations of the Constitution, and the views which Taney seems later to imply on this point, after he had been driven to take the defensive by criticism of the Dred Scott decision.

EDWARD S. CORWIN.

Princeton University.

Politics, Pressures, and the Tariff. By E. E. Schattschneider. (New York: Prentice-Hall Inc. 1935. Pp. xi, 301.)

This study shows how effectively congressional committee hearings can be used by the discerning researcher for the evaluation and portrayal of political behavior. The author has taken the 20,000 pages of testimony on the Hawley-Smoot tariff bill before the House and Senate committees during 1929 and 1930 and contrived from this mass of verbosity a book which displays penetration and originality.

At a time when groups of stupid or selfish people are roundly denounced for their crude demands for public funds, it is well to be reminded of the highly respectable means enjoyed by protected industries for obtaining economic advantages through political channels. In actual practice, the author found that our tariff system came down to a political struggle for the protection of certain manufacturers rather than the adjustment of schedules in accordance with economic standards. "Some businesses are highly political," he states, "and some business men are occupied with politics so continuously that they are substantially politicians."

What the author does not go into fully is *why* Congress listened so sympathetically to all those who sought a high tariff. A discussion of this point would have placed the hearings on the Hawley-Smoot bill against a broader background. This interesting comment, however, is made: "The sentimental basis of the protective system is nationalism, but all who may desire protection come within this set of loyalties equally. Under these circumstances, it is vastly more easy to grant the plea than to deny it."

Very striking is the author's demonstration of the limits upon economic motivation in politics. It is only where a direct profit or loss will ensue that groups are likely to concern themselves in tariff legislation. Professor Schattschneider comes to the conclusion that "the protective tariff is well established because large areas of adverse interests are too inert and sluggish to find political expression, while an overwhelming proportion of the active interests have been given a stake in maintaining the system." Does this mean that under a democratic system "No" becomes the hardest word in the language to pronounce?

The readiness with which Congress followed the requests of special interests appears the more indefensible when the unrepresentative character of trade associations and other private organizations is considered. Certainly congressmen should scrutinize most carefully those who come to offer testimony at committee hearings. The uncritical attitude of the committeemen at the time of the Hawley-Smoot hearings was due basically to the complacent attitude of the party in power toward business. Congress said to business, as the Dodo said to Alice after the caucus race: "Everybody has won, and all shall have prizes!"

Here is compliance politics even more than pressure politics. This study should give us patience to test fully our present arrangements for negotiating reciprocal tariff treaties. This system disrupts the ranks of the protectionists and attracts to itself the exporters who profit by our agreements with other nations. Pressures from one side can thus be brought to counteract those on the other.

Professor Schattschneider has performed a unique task well. His critical analysis presents the first detailed treatment of tariff-making from the political angle.

E. Pendleton Herring.

Harvard University.

A Century of Municipal Progress, 1835–1935. By Harold J. Laski, W. Ivor Jennings, and William A. Robson, *et al.* (London: George Allen and Unwin, Ltd. 1935. Pp. 511.)

This significant volume is designed to mark the centenary of the English Municipal Corporations Act, seventeen well-known authorities on local government having joined forces to make it a book worthy of the occasion. In a general way, it surveys the history of English local government during the past hundred years and examines the system with reference to its present-day effectiveness.

By way of introduction, there is a twenty-page chapter in which Professor Elie Halévy vividly describes the English boroughs and parishes as they were before the era of reform. "The English towns of 1835," we are assured, "were in a condition of barbarism that would have put a citizen of the Roman Empire to the blush." That seems to be somewhat overstating the case, although it is doubtless true that the amenities of civilization, as we understand them today, were not abundant in the factory towns of the sceptered isle when the industrial revolution was running its course. One will readily agree with Dr. J. L. Hammond, however, that "the creation of our modern system of local government is the greatest British achievement of the last hundred years." For England has been no less the mother of city councils than the mother of parliaments. Her free local institutions have been influential over more than half the land service of the globe.

The tremendous revolution which took place in English municipal government during the Victorian era was successful, as Dr. Hammond points out, because its momentum welled up from the masses of the people. To raise their standards of living, the townsmen had to improve their public services. The nation became more municipally minded; even peers at their dinner tables talked of poor laws, public sanitation, the "new police," municipal trading, and workingmen's dwellings. The prestige now enjoyed by film actors and athletic heroes went in those days to statesmen and social reformers. Accordingly, the act of 1835 was only the beginning. The strength and sincerity of the public interest in municipal betterment caused it to be followed by a large number of supplementary reform statutes during the next three generations.

Three excellent chapters deal with the town council, the committee system in local government, and the personnel of English municipal administration. It is Professor Laski's belief that "all things considered, the committee system has proved itself amply in the working." The United States, during the nineteenth century, tried the plan of having municipal services administered by committees of the city council, and it proved a complete failure, but in England it continues to be looked upon as one of the most successful features in the system of local self-government. The reason may perhaps be found in the traditional readiness with which English committees defer to the advice of the expert officials who are immediately in charge of the various municipal services. Committees and officials in English local government have learned the art of working together, and by so doing they have kept the land free from the vice of bureaucracy.

A large portion of the volume is devoted to chapters on public health, highways and transportation, housing and civic planning, schools, public libraries, police and fire protection, museums and art galleries, public utilities, poor relief, and municipal finance. Each of these topics is presented by a recognized authority, and although the quality of the writing is somewhat uneven, it represents on the whole a remarkably high standard as coöperative publications go. Particular interest also attaches to the discussion of the relations which now exist between Parliament and the local authorities, as well as to the brief survey by Dr. W. Ivor Jennings in which the organs of central control are cogently described in their actual workings.

A final chapter by Dr. William A. Robson undertakes to forecast the future. He envisages a vast expansion in municipal enterprises of all kinds, with municipally-operated moving picture houses, bakeries, laundries, restaurants, hotels, dairies, and what not. Dr. Robson recognizes that this, when it comes, will inevitably entail "a diminution of local autonomy," but he does not appear to be concerned about the outcome so long as what he terms "the spirit of English local government" is preserved. How that traditional spirit can be preserved if the autonomy goes is something that would seem to require elucidation. A useful chronological table, listing the most important statutes affecting local government during the past hundred years, is appended to the volume.

William B. Munro.

California Institute of Technology.

State Control of Local Finance in Massachusetts. By Royal S. Van de Woestyne. Harvard Economic Studies. Vol. XLIX. (Cambridge: Harvard University Press. 1935. Pp. xii, 184.)

In this volume, the various laws enacted in Massachusetts from colonial times down to about 1932 for the control of local taxes, debts, expenditures, and accounts are passed in review, and some of the results of the legislation are appraised. Although much of the material is already familiar to students of local finance, a compendious summary such as this will be of value for purposes of reference.

The author is wisely cautious in drawing conclusions as to the effectiveness of the controls now being exercised, but in general he finds the debt-control legislation of 1913 to have been reasonably successful down to 1931–32, and to have resulted in improved financial practices. It did not prevent Massachusetts municipalities from going heavily into debt during the '20's along with local units in other states, but it did compel them to provide more liberally for debt retirement, and it also helped to turn them partly toward a pay-as-you-go policy. The legislature itself was in part responsible for the large debt increases, since it enacted numerous special laws after 1913 exempting this and that municipality from the general indebtedness law; but this is only to say that general legislation is usually like a pious hope that cannot be fulfilled. However, in spite of the greatly increased debt ratio that came after 1931 (due largely to reduced property-valuations), there is ample evidence that the debt-control legislation did, and probably is doing, much good. Some of the other control measures have evidently been less successful.

Written as it is solely from the economist's point of view, and excellent as it is in a technical sense, the work as a whole is somewhat disappointing to the student of government. Nowhere in it is there any adequate description of the organization, the personnel, the procedures, or the methods used by the central government for the supervision and control of local finance. There are references here and there to "skilful administration" and "faulty administration." One wonders as to the basis for these judgments. The important problem today is not that of finding desirable principles of financial management in local communities, but that of getting such administration of the laws at the center as will put correct principles into practical and continuous operation in the localities.

William Anderson.

University of Minnesota.

American Neutrality, 1914–1917. By Charles Seymour. (New Haven: Yale University Press. 1935. Pp. 187.)

Can We Be Neutral? By Allen W. Dulles and Hamilton Fish Armstrong. (New York: Harper and Brothers, for Council on Foreign Relations. 1936. Pp. 191.)

Both of these volumes may be regarded as answers to the recent investigations by a congressional committee of the methods by which wicked munitions-makers and their fellow-conspirators, the bankers, brought pressure upon the government to go to war to protect their profits. Largely as the aftermath of these investigations, the Neutrality Act of August 31, 1935, was passed; but the outbreak of the Italo-Ethiopian war soon showed that more comprehensive legislation was needed. At the same time, the criticism was raised that the concentration of the investigating committee upon the arms industry and its banker-allies was likely to result in legislation which would fail to take into account the complex factors involved in the status of neutrality. Moreover, in view of the uncertain circumstances attending another European war, legislation of an automatic character might have effects quite different from those intended by Congress.

Professor Seymour makes his attack chiefly upon the unfair assumptions of the investigating committee. As he reads the documents, it was the German submarine campaign that was the primary cause of the final decision of the President to break diplomatic relations with Germany and ask Congress for a declaration of war. Step by step, the reader is led from the first reactions of the government to the Allied blockade, through the Lusitania negotiations and the series of protests against the restrictions upon American trade imposed by the Allies, to the renewal of the submarine campaign and its fateful consequences. Certain "misinterpreted documents" are examined in detail. The most important of these is the Page cablegram of March 5, 1917. That Page would have had the United States go to war to protect "our present preëminent trade position" is quite clear; but that the ambassador's views were influential with the President is disproved by the evidence. The Lansing *Memoirs* are quoted to show that Page should be "the last witness to be called upon to explain Wilson's policy;" and the correspondence of Bernstorff and his subsequent testimony before the Reichstag committee are drawn upon to show that while a critical situation would no doubt have developed in the United States if trade with the Allies had been cut off, nevertheless the dominant issue in Wilson's mind was the submarine attacks upon American shipping. In conclusion, Professor Seymour emphasizes the complexity of the problem of neutrality and the serious objections to "any policy designed to operate automatically" under conditions which cannot be exactly foreseen.

In the volume by Dulles and Armstrong, the emphasis is upon the practical problems involved in the passage of adequate neutrality legislation. The popular conception that neutrality is "a clearly defined status" is erroneous. Except in respect to specific and minor matters, "no two authorities can agree on a definition of the precise rights and duties of neutrals." History bears witness to the controversies to which neutrality has given rise. Jefferson failed completely in his efforts to put into effect a policy of complete economic isolation. The outbreak of the World War raised the issue whether a change of circumstances could justify a change in the traditional "rights" of neutrals; but the close of the war left the issue as unsettled as ever. Today, in an effort to "keep us out of war" there is danger lest ill-considered measures be adopted which, if mandatory in character, might have the opposite result to that intended. The authors emphasise the difficulty of putting a complete embargo on the key war materials and the injustice it would work to legitimate American trade; and they favor instead a policy of "trade at your own risk." Moreover, they insist that in view of the uncertain conditions of a future general war, the President should have discretionary power so as to adjust trade restrictions to the needs of the situation. They would go further, indeed, and lay it down as a principle of the new legislation that if the President should find that one of the belligerents has gone to war in violation of the Pact of Paris, he should present his findings to Congress and ask for special authorization to make the embargo effective only against the law-breaking state. The volume closes with the suggestion that "the only sure way for the United States to keep out of foreign wars is for there to be no wars."

CHARLES G. FENWICK.

Bryn Mawr College.

War and the Private Investor. BY EUGENE STALEY. (New York: Doubleday, Doran and Company. 1935. Pp. xxv, 562).

All persons interested in international relations will find much of value in this study by Mr. Staley, with an introduction by Sir Arthur Salter. Begun as a "causes of war" study sponsored by the Social Science Research Committee at the University of Chicago, the work is the result of almost seven years of research, two of which the author spent in Europe studying and interviewing persons who might be willing to disclose interesting facts. This latter source of information was used to exceptionally good advantage.

Mr. Staley has undertaken to show how private international investments have served national diplomacy and how governments have aided investors, how investors have influenced governments and how governments have influenced investors, under what conditions investments are likely to lead to international political friction, and what institutions might be devised to replace the present ones that so often fail to prevent international friction or to bring about an orderly settlement when frictions cannot be avoided. He has studied, with varying degrees of thoroughness, depending upon the importance of the case and our previous knowledge of it, all of the cases since about 1880 where there is any reason for believing private investments (primarily long-term investments) have been a factor in international political disputes. Large numbers of these carefully documented studies, in summarized form, are used in the book to illustrate and to prove the various arguments presented.

"Despite widespread beliefs and convincing theories to the contrary." writes Mr. Staley, "private foreign investments are found much more frequently as tools of diplomacy than as instigators of diplomatic action in those cases of international friction over foreign investments which may be classified as dangerous . . . " (p. 55). His investigations lend much strength to this view, which has already been held by some authorities. He shows that in a number of cases where it had commonly been thought that private investors dragged their governments into disputes, actually the governments first induced the private investors to enter the areas in question. For example, Mr. Staley believes that the "motive power back of . . . French penetration into Tunis came from the political rather than the economic side" (p. 337). It was not so much a *coup de Bourse* as a *coup de Quai d'Orsay*. "The spectacular diplomatic disputes over economic rights in the Regency which have offered a particularly tempting basis for the generalization that the motivation of French policy came from private economic interests occurred *after* the definite crystalization of this policy" (p. 341).

To remove and adjust conflicts arising from investments, denationalization of investments and mondial (world) supervision are thought to be necessary. It is suggested that a World Investment Commission, a World Commercial Court, international incorporation of concerns doing a business of more than national scope, a World Investment Bank, and a World Consular Service might well be established. The question of what policies should be followed is a very difficult one, and one on which many readers of this book will disagree. The other important question upon which there will probably be considerable dispute is whether Mr. Staley is correct in not putting more emphasis upon the influence of investors on their governments—though he by no means neglects the subject. But probably most readers will agree that "the caricature of the banker burdened with bags of 'surplus capital,' forced to seek outlets for his excess funds in hazardous territory, then calling upon his government for protection, belongs mainly in mythology" (p. 273).

FRANCIS A. LINVILLE.

Dartmouth College.

Mussolini's Italy. BY HERMAN FINER. (New York: Henry Holt and Company. 1935. Pp. 564.)

Dr. Finer has enriched political science by the weighty volumes of his

The Theory and Practice of Modern Government. Since this standard treatise on the institutions of democracy does not deal with dictatorial states, the present book may be considered as a supplement, or rather a counterpart, of his former studies. It reveals once more the notable qualities of the author's scientific accomplishments, namely, wealth of material well-grouped and well-selected, lucidity of presentation and style, mature judgment, and, perhaps most conspicuous of all, abundance of sociological evaluation based on a rare capacity for comparison of socio-political phenomena. The book is particularly illuminating because it derives its material not only from thorough research in the Fascist and anti-Fascist literature, but also from personal contacts during the author's sojourns in Italy. The description of Mussolini's physical appearance (p. 58) is an example of such personal observations.

The title of the volume formulates precisely its objective. Fascism is the creation of one man alone, and Italy of today is Mussolini's Italy. Manifestly, the crucial problem of dictatorial government consists in the question of whether it is a new technique of government capable of being operated by any man or group of men under given circumstances, or whether it is the casual, and therefore singular, coincidence of an extraordinary personality, applying specific methods of domination, with a definite situation favorable to such a rule. The frequency and simultaneity of autocratic governments in different social milieus seem to confirm the first hypothesis, while Dr. Finer adheres to the second when he sums up: "It is difficult to conceive of his [Mussolini's] system surviving his own presence." In view of the comparative novelty of the dictatorial technique, it is perhaps premature to come to final conclusions. In Dr. Finer's opinion, Fascism is the unique creation of a unique genius, and not a repeatable experiment.

Are the actual achievements of Fascism for Italy tangible enough to outweigh the undisputable losses of spiritual and personal liberty and of economic happiness of the masses? Dr. Finer's answer is far from confirming the official Fascist legend of the beneficial results gained during the last ten years of politically undisturbed existence. The spiritual losses are greater than the spiritual gains. The spiritual corruption cuts deeply into the texture of the national mind, and will last longer than the undeniable upswing of the national conscience crippled by centuries. Moreover, Dr. Finer, in one of his most important chapters ("Corporations and Economic Policy"), assails the corporative myth, which, under the pressure of the crisis, became one of the main assets in the Fascist propaganda in other countries. The corporative structure is a new bureaucracy of little real power, but an indispensable instrument of dictatorial technique. In a further edition, however, we should like to learn more about the actual work of the corporations in the field of planning and reconstruction of industries, and a report on the juridical principles guiding the vast activities of the labor courts would be welcome. One could wish also a more detailed description of the work of the Corporative Chamber, especially as to whether the deputies merely rubber-stamp government bills like the Nazified German Reichstag, or whether they exercise some, even though limited, freedom in amending them, or in confirming the decree-laws. Dr. Finer gives only four lines on this point, and L. Rosenstock-Franck, in his *L' Économie corporative fasciste en théorie et en fait* is more enlightening.

After "A Brief Survey of Dictatorship" (Chapter I), Dr. Finer deals in Chapters II to V ("The Birth of Fascism") with Mussolini's personality. He emphasizes the highly selective character of his spiritual make-up, and incidentally he illustrates how this period of mass movements is given to amateurishness and superficiality. The succeeding chapters contain a succinct history of Italian parliamentarism before 1922, which, in the reviewer's opinion, does not do sufficient justice to the accomplishments of Italian Liberalism in the late nineteenth century by which Italy was raised to the rank of a great power. Mussolini's shrewd opportunism was recently confirmed by George Seldes' revelations in his *Sawdust Caesar.* Although most of the content of the chapters on "Rise and Triumph of Fascism" is familiar, it is well enough to have once more disproved the Fascist distortion of truth that Mussolini's movement rescued Italy from becoming a province of Moscow. On the evaluation of Giolitti's personality, the reviewer disagrees with Dr. Finer; in his opinion, Giolitti's failure to deal effectively with the post-war crisis was due less to lack of insight than to the belief that things would straighten themselves out, which, indeed, would have happened had not Mussolini's warriors deliberately fostered unrest.

In Part III, Dr. Finer sets forth with convincing clearness the Fascist doctrine of state and society, of society and individual, and of individual and state, based on the writings of Mussolini himself, Rocco, and Gentile, and interlaced with the collateral theories of Sorel, Renan, Schopenhauer, and of skillfully perverted Hegelianism. It is certainly a rare manifestation of the Latin genius for formulation that Fascism, while it was in its beginnings a *mixtum compositum* of various heterogeneous elements, has become in the meantime an admirable spiritual entity which offers fewer discrepancies than the ideology of National Socialism, which was preconceived and not tainted by philosophical premises. Chapter VIII reports the technical contrivances of the one-party state to control public opinion, while Chapter IX deals with institutions such as the prime minister and his associates, the crown, Parliament, and the Grand Council. One misses here a description of the courts, and particularly of how the ordinary conduct of legal business by the courts is influenced by Fascist precepts. But the reviewer agrees with Dr. Finer's final evaluation of Mussolini's capacity for government (p. 285): "It is of that high creative order which we call genius."

In the next part, "The Manufacture of Obedience," we see Mussolini at work, and here Dr. Finer discovers in the amazingly wide range of Mussolini's personality one of the secrets of his success: will power, capacity to listen to experts (a rare attribute of autocrats), devotion to work—qualities which distinguish the *Duce* from most of his colleagues, and which make the rapid expansion of dictatorial government all the more perplexing. Chapters XII to XV are devoted to the Fascist party as the unfailing instrument of the dictatorship and, at the same time, as the creator of the new spirit. In reading Dr. Finer's discussions, one is assailed by doubt as to whether this crude system of political psychoanalysis can ever become normal, because the methods for the selection of leaders, by lack of impartiality, are apt to destroy the chances for creating a true aristocracy.

Chapter XVI ("The Social Policy") deals, *inter alia*, with the position of the church. Mussolini has learned from Napoleon's experience that an honorable truce is better than a running battle only to be lost ultimately. Chapter XVII ("The Corporations and Economic Policy") is perhaps the least satisfactory section of the volume; but Dr. Finer is hardly to be blamed for its lack of conclusiveness. The book was published before the outbreak of the Abyssinian war, which was more the offshoot of economic pressure on the régime than of spiritual ambitions of *grandeur*. It is not surprising that the concluding chapter ("The Spiritual Gains and Losses of Fascism") is rather skeptical concerning the positive evaluation of the régime. Mussolini is a great man, but great only by degrading his people. Having read Dr. Finer's general appraisal, one is comforted by the thought that, according to the teachings of history, the violated spirit may rise as the nemesis, even in an epoch when emotions count more than reason.

Assessing the book by general standards, one cannot fail to be impressed by the unmitigated subjectivity of the author in presenting his material and in drawing his conclusions. But, on second thought, one realizes that Fascism, even as a scientific object, does not admit of objectivity. He who believes in the tenets cannot but accept the institutions which are instrumental for the practical realization of them. Any comparison of the system with the familiar standards of free governments must perforce lead to conclusions which are subjective value judgments. Dr. Finer's approach to and presentation of the Fascist state explains the methodological difficulty, namely, that an objective appraisal of a system which in itself standardizes subjective values is well-nigh impossible. The subjectivism of the author is, however, so well documented and so convincingly argued that one can hardly fail to agree with his findings.

In conclusion, the reviewer regards Dr. Finer's book, in spite of some omissions, as the best on the subject, and certainly as an outstanding contribution to our knowledge of the phenomenon of Fascism.

KARL LOEWENSTEIN.

Yale University.

Sawdust Caesar; The Untold History of Mussolini and Fascism. BY GILBERT SELDES. (New York: Harper and Brothers. 1935. Pp. xv, 459.)

Here, as the title indicates, is a piece of sensational journalism rather than of scientific analysis. Such a remark, however, is not meant in condemnation; for there is a considerable measure of usefulness in Seldes' contribution, considering all the extraordinary circumstances. The man Mussolini, and the whole Mussolini episode, is crammed with sensationalism, and that factor cannot justly be eliminated. Mussolini, as Seldes shows, is a journalist, turned tyrant and destroyer of the press. He has been, for nearly fourteen years, a figure for journalistic adulation, a perfect "headliner," extravagantly over-praised in sober metropolitan daily as well as in intellectually thin five-cent magazine. Now at last the balance is redressed, the seamy side turned out: the whole seamy side and nothing but the seamy side. It is significant that after completion in 1931, this adverse picture was withheld from actual publication until the lapse of four years (and the advent of the Ethiopian campaign) was held to have prepared the public mind for its reception.

The author's vigor of style is well known. Without adequate documentation, but with an immense amount of quotation from relevant memoranda, journalistic interviews, and confidential communications (impossible of documentation, in view of the conspiratorial character forced by the censorship), a picture of startling vividness is presented. Among the important witnesses cited are Buozzi, Cesare Rossi, Filippelli, Balabanoff, Torres, Irene Desler (Signora Mussolini?), De Ambris, Nenni, Serrati, Vincenzo Nitti, and, by no means least, Mussolini at various periods, as editor of *Lotta di Classe*, of *Avanti*, and of the *Popolo d'Italia*, and as speech-maker at large. We see the brawling boy; the starving, despairing exile; the self-distrustful *Avanti* editor, dependent on Balabanoff's inspiration; the socialist turned interventionist by aid of French cash (1914); the politician (1919–21) shifting from revolutionary syndicalism to flirtation with labor socialism and then to championship of the very bourgeois society against which the youth had violently inveighed; the prime minister stung by Matteotti's nagging into an exasperation that sets the Fascist *Cheka* to its deadly work of liquidating the parliamentary opposition; the ex-anarchist turned conqueror of totalitarian state power; the atheist restoring papal independence in order to win popular support, but soon driving the Church into fear and abhorrence by his pagan state absolution; the proponent of a "corporativism" that is designed to integrate the nation's productive effort, but results in a startling depression of the Italians' standard of living; the advocate of self-defending nationalism who is tempted by his own militaristic preachments into an imperialist expansionism which makes his Italy an object of dread to a world that longs for collectively guaranteed security.

All this melodramatic moving picture is presented in startling colors, under constant limelight, without reservations, and with little consideration of the maëlstrom of difficulties that beset any post-war Italian statesman. So much is made of Fascist violence, and of Mussolini's will, his vaulting ambition to play the Napoleon or the Caesar, that it is difficult to appreciate the epithet in the book's title. Clay perhaps, or base rather than noble metal—but "sawdust"?

HENRY R. SPENCER.

Ohio State University.

The Fall of the German Republic. BY R. T. CLARK. (London: George Allen and Unwin, Ltd. 1935. Pp. 488.)

It is worth noting at the outset that the author of this book has long been familiar with the field here covered; for another work on *Republican Germany* is already credited to the same pen, and the present work, according to his own words, "represents a twelve year's study of German politics." This study has unmistakably resulted in an important book, the purpose of which may best be expressed by a direct quotation from the preface: "What I have tried to write is a *political study*, that is to say, to narrate the political history of the German Republic, to explain the political causes of its collapse, the political faults of the system, the political errors that were made, and, passing in the last instance slightly out of the political sphere, explain why they were made."

The narrative falls into three periods: the first from 1919 to 1927—the period of consolidation of the Republic; the second from 1927 to 1932—the years of decision; the third from 1932 to 1933—"the murder of the Republic." But the critical period in German history really begins in August, 1918, and ends before Easter, 1919, because "no one can but admit that there was at that time somewhere a tremendous opportunity offered to some one of which nobody took advantage." In taking this view, Mr. Clark is perfectly consistent in also believing that, in the evolution of the German Republic, the economic factor was not a decisive one and that the fall of the Republic was not inevitable, that it was essentially "a human tragedy with logic at enmity with common sense and inevitability at odds with vision."

There are, of course, those who will not agree with the author's fundamental position or with many of his conclusions; but that is a matter which is to be determined by the reader and not the reviewer. The important thing to record here is that this is a thoughtful and honest attempt to give the reader an account and an interpretation of the greatest tragedy of modern times in the key state of Europe. And that is important. We may still be too near the events to expect any work to account fully for the fall of the German Republic and to interpret correctly the motives or pass judgment upon the scenes and actors in the drama of the period here described, especially in the positive manner of Mr. Clark's convictions. The historian may later conclude that when a nation is experiencing starvation, while a peace is dictated from without which leaves little choice to the leaders within a state, it is too much to expect rational reactions. But these reservations do not prevent my saying that this book is one of the most penetrating descriptions and analyses of the combinations, shifts, *blocs*, and movements of the political parties during this period that has appeared to date in English. Moreover, the author frankly admits that "it is in relating intellectual and spiritual movements to political events that one is most likely to go wrong in judgment, to mistake the trivial for the essential, the temporary for the permanent," and that the full explanation of the fall of the Republic has not yet been found. The book is an informing study and deserving of careful reading.

KARL F. GEISER.

Oberlin College.

Gustav Stresemann; His Diaries, Letters, and Papers. Edited and translated by Eric Sutton. Vol. I. (New York: The Macmillan Company. 1935. Pp. xxxii, 506.)

"Why does the German people forget so soon?" Thus did Stresemann, the greatest German statesman of the Weimar régime, cry out against the flood of attacks to which he was subjected. Today, almost seven years after Stresemann's death, this bitter question is still pertinent. The man who accomplished much for his country, and who labored for the pacification of Europe, is remembered in the Third *Reich* as the husband of a Jewess and as an official of the discredited Republic.

Stresemann left a voluminous mass of papers. In 1932–34, these were published in three volumes in Germany under the title, *Gustav Stresemann, Vermächtnis.* The publication of this "legacy" occasioned much controversy in Europe over the question as to whether Stresemann was a sincere advocate of peace or was merely playing for time so that Germany might recover her strength. Although a limited selection of Stresemann's writings and speeches was published in English shortly after his death (*Essays and Speeches on Various Subjects,* translated by C. R. Turner, London, 1930), the definitive English edition of the *Vermächtnis* is being prepared by Eric Sutton, who also translated Antonina Vallentin-Luchaire's life of Stresemann (New York, 1931). One volume has thus far appeared, which deals mainly with the years 1923 and 1924. Some ephemeral material has been omitted in Sutton's translation, but all of the papers included are presented in full, unexpurgated form. Of Stresemann the man, and of his life prior to 1923, there is comparatively little (see, for example, pp. 3–10, 428–433). However, Mr. Sutton has met this lack by supplying a good biographical sketch, connecting comments, and footnotes.

The years 1923 and 1924 witnessed the invasion of the Ruhr; Stresemann's "hundred days" as chancellor and the beginning of his long service as foreign minister; the collapse of the currency; the Hitler *Putsch;* the Dawes Reparation Plan and the London conferences putting the plan into effect; and the preliminary negotiations which later led to Germany's entry into the League of Nations. On these and other domestic and foreign questions, the papers of Stresemann throw much light. This is particularly true of the negotiations preceding and during the London conferences. Of Hitler, Stresemann said: "An appeal in a beer-cellar to Herr Adolf Hitler to come forth and guide the political destinies of Germany will bring no help to the German people. The damage that all this has done will burden us for a very long while" (p. 204).

Judged by the first volume of the Stresemann papers, Mr. Sutton has made a valuable contribution to the historical material in English on post-war Germany and her foreign relations. The editing and translating have been done excellently. There is no index, but a glossary of names (not always accurate) is appended to the volume.

ROGER H. WELLS.

Bryn Mawr College.

The Genossenschaft-Theory of Otto von Gierke; A Study in Political Thought. BY JOHN D. LEWIS. University of Wisconsin Studies in the Social Sciences and History, No. 25. (Madison: University of Wisconsin. 1935. Pp. 185.)

Here is a very satisfactory treatment of the most controversial, central idea of Otto von Gierke's works. The author develops, in nine chapters, his main theme, and a correct one, that Gierke's associational idea is neither strictly pluralist nor totalitarian. Instead, it represents an attempt to "map out a middle course between the atomistic individualism which has grown from a natural rights and social contract background and the organic authoritarianism" (p. 90; also p. 60, etc.) This finding answers Professor Lewis' first question concerning "a basis for judging the validity of appeals to the authority of Gierke on the part of both radicals and conservatives" (p. 7).

The author's second major interest was "to discover what bearing Gierke's association-theory might have upon the theory of federalism" (*ibid.*). He found that "logically it might be argued that Gierke's original principles of association should lead to a federal structure" (p. 91). But in fact, it did not lead Gierke to such a conclusion, although "his interest in administrative reform in the direction of territorial decentralization seems to look in this direction" (*ibid.*). Professor Lewis adds that even Hugo Preuss, although led by theoretical and historical studies to follow out these "logical" implications, failed to maintain them when confronted with the practical exigencies of drafting the Weimar constitution.

The feature which deserves greatest commendation in this study is the author's repeated insistence upon the true nature of Gierke's views on the "reality" of group persons. Professor Lewis is definitely more felicitous in this respect than Professor Ernest Barker, who in his introduction to the sections from Gierke's *History of German Association Law* went over some of the same ground. "Such organisms," Lewis relates, "may legitimately be compared with physico-psychical single organisms. But," he goes on, quoting from Gierke himself, "rightly understood, nothing more is claimed by the comparison than that we recognize in the social body the unity of life as a whole arising out of separate parts—such a unity as we do not find elsewhere except in natural living creatures. We do not forget that the inner structure of a whole whose parts are men must be of such a quality that natural structures cannot serve as its model; we do not forget that there takes place here a spiritual unification which is established, given form, put into operation, and dissolved by psychically motivated action. . . . But we view the social whole, like the living organism, as a living structure, and classify the collective community together with the individual creature under the general concept of living creatures" (p. 57).

Professor Lewis' essay is essentially devoted to making very clear this central core of Gierke's doctrine; and by doing so he has performed a splendid service. Incidentally, the last quotation shows that the author has been quite successful in rendering the difficult and often involved phrases of Gierke into English. He has been generous in offering such passages from Gierke's writings; what is more, he has given us in several appendices four little gems from Gierke's writings, two of which are fairly hard to consult even in German, namely, the beautiful poetic introduction to Volume I of *Das deutsche Genossenschaftsrecht*, the chapter on federalism from *Johannes Althusius*, Gierke's celebrated rectorial address on "The Nature of Human Associations," and finally an essay on "The Basic Concepts of State Law and the Most Recent State Law Theories." By these additions, Professor Lewis has made his essay even more valuable, although his own lucid exposition alone would have earned him a place on the shelves of every attentive student of political thought.

CARL JOACHIM FRIEDRICH.

Harvard University.

Propaganda; Its Psychology and Technique. By Leonard W. Doob. (New York: Henry Holt and Company. 1935. Pp. 417.)

In this interesting, refreshingly objective, and often brilliant treatment of propaganda, Dr. Doob elevates current discussion of the subject to a new level of psychological precision. The primary aim is to "enable the reader to grasp propaganda in such a way that he will be able to understand the phenomenon in all its various manifestations." This is done by translating propaganda practices into a set of eight principles with twenty-eight corollaries. The approach is definitely empirical and not experimental. The conclusions are obviously based on such evidences of pressure-group activity as are revealed in recent periodical accounts of the Communist party, the Lord's Day Alliance, the New York Society for the Suppression of Vice, the Nazis, munitions makers, and peace societies. The result is a frame of reference as novel as it is useful.

The study begins with a vigorous discussion of the usefulness of social psychology as a weapon for attacking the whole problem of propaganda. This is followed by an explanatory section devoted to a careful definition of relevant terms. Dr. Doob's principal contribution, an exposition of propaganda technique in terms of principles, comprises the third part of the volume. These principles are then illustrated by references to the activities of a number of pressure groups, and in the course of brief but illuminating discussions of the press, radio, motion pictures, and other means of opinion dissemination. In conclusion, the author touches lightly upon the rôle which propaganda plays in social life today. Stepping gingerly from the laboratory into the arena of group struggles for power, he courageously raises the question, "Which propaganda shall we accept and which shall we reject?" The answer? There is none.

Psychologically, every propaganda situation is a stimulus-response situation. The art of propaganda is, therefore, the art of creating a stimulus-situation which will produce a desired response, or more precisely a desired integration of various types of attitudes constituting the "mental field" of the individual. Equipped with a knowledge of these several types of attitudes (central, segmental, general, specific, dominant, latent, related, and auxiliary), the propagandist proceeds to create a stimulus-situation in which suggestion plays an important part. This is done by applying certain principles. For example, the propagandist first of all makes his stimulus-situation perceived; he determines what type or types of propaganda to employ; he arouses "related attitudes;" and above all he seeks to produce a submissive attitude on the part of his victims which will more or less effectively blot out the influence of competing stimulus-situations.

Dr. Doob has performed his autopsy of "mental fields" and "stimulus-situations" with remarkable skill. Both have been dissected and laid bare with cool precision. The remains have been labelled and arranged in their respective compartments. The only difficulty is that no method is suggested for reassembling them and resurrecting a life situation. After all, unless we know *under what conditions* certain principles should be employed, they are of little practical use. To state, for example, as the author does in principle 4C, that "the propagandist arouses auxiliary attitudes that also function as related attitudes" is of limited assistance unless we know under what conditions he does this. Possibly the experimental method would be helpful.

HARWOOD L. CHILDS.

Princeton University.

Propaganda and the News. BY WILL IRWIN. (New York: McGraw-Hill Book Company, Inc. 1936. Pp. 325.)

Aside from contributing a number of interesting anecdotes and personal experiences from his long career as a journalist, Mr. Irwin has added little of importance to our present knowledge of propaganda; indeed, he manages at times to muddy the waters of this troublesome subject by skimming too widely over its surface. Furthermore, his book will prove disappointing to those already initiated into the ways of the press, and certainly to readers already familiar with his excellent series of articles on "The American Newspaper" which appeared in *Collier's* in 1911.

Mr. Irwin writes in the manner of one who, having been close to great events, has important disclosures to make. These "revelations" may seem novel to the lay reader, but in the light of the author's quite evident failure to make a disciplined study of the published work of prudent investigators of the theory and practice of propaganda, his glib certainties will exasperate the informed person. I hope it may not seem pedantic to insist that Mr. Irwin should never have attempted to analyze many of the propaganda problems he touches so entertainingly, since it will require a lot of hard research in the future to arrive at a proper understanding of causes and influences.

Truth to tell, Mr. Irwin attempted an impossible task. His all-embracing method was full of pitfalls at the very start. Perhaps unconsciously, he planned his book so that it would embody the subject-matter with which he was most familiar at the time of writing. The first one hundred pages, not too well integrated with the remainder of the volume, consist of the story of journalism from classical times to the arrival of the "yellows," including a discussion of the theory of what is "news." He gives credit to no authorities in this section, failing even to footnote his own *Collier's* series. Then he swings into ten pages dealing with the press agent. There is confusion here, inasmuch as Mr. Irwin gives the impression that the publicity man grew out of the investigation of the insurance companies in New York. Germany's pre-war training of propagandists, already dealt with by the author in a magazine article some years ago, takes fourteen pages.

Five chapters discuss World War propaganda, and post-war promotion gets a chapter, with two on present-day official propaganda abroad (which add nothing new to knowledge of the methods of Hitler, Mussolini, *et al.*). The contemporary propagandist is reached in Chapter XX.

Chapters XXII and XXIII have a good deal to do with the 1928 presidential campaign propaganda, and here Mr. Irwin's sympathy for Mr. Hoover surely gets the better of his objectivity. "Twice," he tells us, "Hoover protested sincerely against injection of religious bigotry into the campaign." This is first-rank naiveté. Hoover did made a weasel-worded statement on religious prejudice in Albuquerque in August and disavowed religious propaganda in connection with the letter written by Mrs. Caldwell, Republican national committee-woman from Virginia, but of course he did not lift a finger to stop the flow of countless publications into the South and West aimed at fomenting religious antagonisms; and while the Republican organization at times openly deplored the effort to stir up religious hatred, secretly it gloated over it.

Mr. Irwin's "bibliography" on page 314 contains the single note, "The Book of Experience." Only three bibliographical footnotes are included in the entire book. Since he drew, consciously or unconsciously, for materials on propaganda from his own articles in periodicals ("If You See It in the Paper, It's—?," *Collier's*, August 18, 1923; "You Have a Sixth Sense for Truth," *Collier's*, August 25, 1923; and "Age of Lies," *Sunset*, December, 1919), it is a pity that he failed to cite these references, if no others, for his readers.

RALPH D. CASEY.

University of Minnesota.

Insurgent America: Revolt of the Middle Classes. BY ALFRED M. BINGHAM. (New York and London: Harper and Brothers. 1935. Pp. 235.)

This is an interesting and provocative analysis of the part played by the middle classes in American politics, of the middle-class basis for European fascism, and of the prospects for guiding the American middle classes into a new political movement seeking the attainment of "an economy of abundance." Its author, the young editor of *Common Sense*, is concerned with a number of the same questions that Professor A. N. Holcombe set himself to answer three years ago in his *The New Party Politics*. Bingham's conclusions are even more emphatic as to the dominant rôle which the middle classes will play in our future political life. He confesses that it is not clear that they are *numerically* dominant, although he seems to feel that the rise of the white-collar and professional occupations during the last fifty years has more than offset the diminishing number of farmers. But more important than the question of numbers, which cannot be precisely answered, is the functional and psychological dominance of the new middle classes, particularly of that section represented by the technical and managerial elements. It is consciousness of class that counts, insists the author; and such consciousness of class as the working people possess is largely middle-class consciousness.

Mr. Bingham is sure that no radical political movement can succeed which does not attract a large segment of these middle classes. Since he is anxious to create a new economic system so that all the population may have ample quantities of creature comforts and of reasonable luxuries, he suggests a program to induce these classes to trade their stake in capitalism for the new order. That stake (which makes them afraid of the communist or socialist programs) is the "craving for security;" but it is security of *income*, not profit in the usual meaning of that term. With the average farmer's income in 1930 placed at $727, and even that of the shopkeeper at only $1,211, it is nonsense, the author insists, to talk of the middle-class stake in capitalism. They, and the working classes, want homes, cars, radios, and the standard domestic comforts and personal articles. They want to protect their insurance and savings; they want their jobs both for certainty of income and as a "way of life." Wise political strategy can and must safeguard these interests, not only in framing an ultimate program, but in its plan of transition. The Marxist parties have failed because their approach is not adapted to American attitudes and social traditions. A successful radical party must build upon the Populist tradition which already is changing into realistic "indigenous" radicalism in the Middle West. Chief weapon in the Machiavellian arsenal of verbal appeals for creating this new "commonwealth party" is the concept of "the economy of abundance" dramatized by the Technocrats.

Were it not unseemly for a reviewer in this journal to leave his lookout "above the battle," this one would be tempted to overlook the more naïve manifestations of Mr. Bingham's meliorism and shout, "Bravo!"

CHARLES MCKINLEY.

Reed College.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

In *America Must Act* (World Peace Foundation, pp. 80), Assistant Secretary of State Francis B. Sayre restates the widely-publicized foreign trade program of the Roosevelt Administration. Economic nationalism, he says, is "sweeping the world like a prairie fire." Consequently, "unsalable surpluses" overhang the home market, forcing down "domestic prices." To maintain prices, we must either limit production or export the "surpluses." The former would involve reduction of the "American standard of living" and "regimentation . . . incompatible with the American spirit." The latter course necessitates a general lowering of trade barriers, permitting larger imports to make possible larger exports. Hence the Administration's trade agreements policy. Because of the "striking triangularity of American trade," it is desirable that these agreements be multilateral in effect. The Administration has therefore rejected "preferential trading" in favor of the unconditional most-favored-nation principle. After describing the machinery and process of "trade bargaining," Sayre analyzes "results achieved." He closes with the theses that economic nationalism is not only an "outgrowth" but also a cause of war, and that the Administration's program tends therefore to promote peace among nations as well as to restore prosperity within the United States. Few will deny that protective tariffs tend to lower living standards. But this is chiefly because tariffs artificially raise prices, thereby restricting consumption. Yet the Administration's objective appears to be not so much to increase imports, thereby lowering prices and increasing consumption, as to sustain or raise prices of certain commodities by exporting "unsalable surpluses." With lower prices, some of these "unsalable surpluses" might become salable. The contention that failure to restore foreign markets will necessitate "regimentation" is unconvincing. Even under our relatively inelastic price system, supply and demand will, in the long run, determine prices and force out sub-marginal producers. The statement that the United States has "generally" favored unconditional interpretation of most-favored-nation treaties is historically incorrect. The argument that economic nationalism tends to cause war is pure speculation. Indeed, it is arguable that a higher degree of self-sufficiency might increase national security and diminish danger of entanglement in wars between other nations. Under present-day conditions, it would seem that a government committed to a policy of isolation might hesitate for political reasons to increase our dependence upon foreign goods and foreign markets. —Harold H. Sprout.

In *The First Two Decades of the Pendleton Act; A Study of Civil Service Reform* (Lincoln: University of Nebraska, pp. 274), A. Bower Sageser presents a well-phrased, carefully-prepared, and scholarly analysis of the development of civil service reform in the government of the United States in the formative period, 1883–1903. The author has made good use of available material in the Library of Congress and in the library of the United States Civil Service Commission, as well as of that in the departmental libraries in Washington. He traces, in his initial chapter, the struggle for reform prior to 1883, particularly during and after the Civil War. He analyzes the experimental development during Grant's administration under the able leadership of George William Curtis. He shows that President Hayes was sincerely interested in reform, advocating it in messages to Congress and practicing it in his appointments. The part played by reform organizations, such as the National Civil Service Reform League, and by various leaders both within and without the government, including George William Curtis, Dorman B. Eaton, Carl Schurz, George H. Pendleton, and others, in securing the adoption of the Pendleton Act in 1883 is carefully described. The attitude of the various administrations toward the enforcement of the law is presented in considerable detail. The administrations of Grover Cleveland and Theodore Roosevelt are approved. The attitude of Chester A. Arthur and Benjamin Harrison toward civil service reform is criticized, though perhaps not definitely disapproved. The administrations of William McKinley are clearly disapproved. The tremendous pressure brought to bear on the appointing authority by politicians and office-seekers to secure special favors for themselves or their friends is pointed out repeatedly. The author shows that, from a small beginning in 1883, the classified civil service was gradually expanded by succeeding administrations so that, by 1903, the merit system was definitely accepted as a fundamental part of our governmental scheme.—DANIEL B. CARROLL.

In his *Political Process: A Functional Study of American Government* (Harper, pp. vii, 188), S. McKee Rosen stresses the now familiar and widely accepted thesis that the teaching of undergraduates in American government should not include a mere narration and description of existing form, structure, and machinery. It is highly desirable that student and layman alike be first informed of those forces which underlie and condition the rigid legal rules and formally declared policies of the state. So long as the major parties are primarily loose federations to capture the presidency, while congressional leadership, despite instrumentalities for partisan control of legislative organization and procedure, remains confused and irresponsible, government by party becomes increasingly subordinate and subservient to government by organized minorities. The author has indicated the great influence upon the process of government which these ubiquitous pressure groups exert. He has developed, in particular, the rôle and the influence in politics of business, of agriculture, and of labor. The presentation has little that is new, but the author has summarized in concise and accurate form the methods of action of those great aggregations. The treatment and interpretation are essentially liberal, being based upon an adequate historical knowledge and a thorough familiarity with contemporary studies in the several disciplines. Although the interaction between pressure groups and government in its various forms and phases is made entirely clear, it would have been desirable to emphasize the existing paradox of having two parties without having also many of the essentials of the two-party system. The author's conclusions are cautious. He believes future adjustments may necessitate new types of politico-economic organization and a much closer and more responsible relationship and accommodation between power groups and the state. In a period of emotional laudation of the mere forms of government, it is useful to have this realistic survey.—Thomas S. Barclay.

In *The New Social Order in America* (Kansas City: Brown-White Co., pp. 242), Guy V. Price recognizes that new influences have been affecting our political and economic structure, and he not only analyzes these, but describes the attempts we have made at solutions. With the presses issuing a stream of literature blindly condemning or defending the course we have followed, it is a relief to find an author who appreciates the fact that this decade differs from the last, and that a new society is evolving. Dr. Price has read widely in the literature of philosophy, sociology, religion, education, political science, economics, and international relations, and he quotes generously from copious notes. But while recognizing the need of a synthesis rather than a mixture of the extensive material he has drawn upon, he has not completely achieved his end. His thought is interrupted by the excerpts from other authors and references to their views which crowd nearly every paragraph. As a result, this book is more tedious reading than a thesis. His diligence is commendable, but the material would have been used to better advantage had he given us the information and his philosophy in his own words and left his citations to the chapter bibliographies. Both in his text and in his bibliography, the author has confused Thomas Adams, the city planner, with the late T. S. Adams, the economist.—S. Gale Lowrie.

For forty years, John C. Calhoun as congressman, senator, vice-president, secretary of state, and quadrennial presidential aspirant was the South's greatest leader and political thinker. His long career deserves more adequate treatment than it receives in Arthur Stryon's *The Cast Iron Man: John C. Calhoun and American Democracy* (Longmans, Green and Company, New York, pp. vi, 426). Concerned primarily with a rambling discourse on the author's concepts of American democracy, the book contains less about Calhoun than can be found in the better college textbooks. No problem of Calhoun's career is given more than a superficial treatment, and most of the problems are passed over without mention. One could not learn from these pages that Calhoun was a constitutional thinker, a supreme logician, and an able political organizer, but one could find many paragraphs devoted to such theses as that "in the last analysis, it is temperament rather than intellect that makes men libertarian." Errors of fact that would bring failure to a sophomore abound. The legend of Levi Lincoln driving John Marshall from the State Department is given; Washington, we find, was "denied a third term;" Jefferson walked the length of Pennsylvania Avenue "accompanied by the militia" to his first inauguration and was unanimously reëlected in 1808! The book is recommended to the collector of curios rather than to the student of American biography.—W. B. HESSELTINE.

A small group of men met at Princeton on June 22–24, 1935, under the auspices of the Public Administration Clearing House to try to break down the problem of education and training for the public service into its elements and to establish certain criteria and principles to serve as a guide in considering the desirable types and extent of such education and training programs. Professor Morris B. Lambie provided the point of departure for the informal round table discussions through a memorandum summarizing previous attacks upon the problem. After two days of free ranging discussion, it was decided to embody the conclusions of the conferees in a series of resolutions. Professor Lambie was asked at the close of the conference to prepare a summary, including the preliminary memorandum, the resolutions, and an epitome of the discussions which led up to them. The result is the pamphlet *Training for the Public Service* (Public Administration Clearing House, Publication No. 49, pp. 50). The discussions of the conference dealt both with pre-entry, academic preparation and with in-service, or post-entry, training. Much valuable information is contributed by the summary to each aspect of the discussion. The pamphlet represents a new and advanced stage in the study of this important aspect of public administration.—HARVEY WALKER.

STATE AND LOCAL GOVERNMENT

Because of the close linkage between state and local governments—a linkage which has always existed in the field of constitutional law and which has recently been extended to the realm of finance—it is in many ways desirable to combine in one course the material on these two levels of government. For such a purpose, *State and Local Government in the United States* (F. S. Crofts and Co., pp. 346), by William S. Carpenter and Paul T. Stafford, constitutes a valuable text, and the reviewer has already recommended it to several teachers. More readably expressed and more accurately prepared than most treatments of the subject, the work is, moreover, enriched by Professor Carpenter's wide knowledge of American political theory and American social history. The explanation of constitutional prohibitions against special legislation in terms of social background is merely one example of this thoughtful blending of the dual approach. Similarly, the problems of public welfare—health, education, and correctional and recreational administration—are adeptly handled in the light of Professor Stafford's extensive study of these questions, particularly in New Jersey, and it is only necessary to consider briefly the increasing number of welfare problems which are coming under the control of the state to realize how important is an adequate treatment of this subject in relation to state administration. The defects of the book—or so it seems to the reviewer—arise from the over-emphasis on its particular excellencies. From the beginning, political science seems to have had but a loose hand on the rein; sociology soon took the bit in its teeth, and by the end of the volume the erstwhile rider limps along a sorry distance behind. Constitutional and administrative objections to grants-in-aid are entirely overlooked. The intricate and many-sided problem of constitutional home rule is not attacked from the angle of political science; interstate action and the fiscal social and economic relation of the state to the federal government are too cursorily treated. Well-intentioned recommendations are too frequently made without a careful working out of the governmental principles and problems which would be involved in the practical application of them. The reviewer is not predominantly concerned with the minor errors which appear (although he has, incidentally, prepared a list of them which he will be glad to send to anyone who plans to use the book as a text); he is concerned with the central conception—or lack of conception— of political science which is manifest. It is not as a compiler of suggestions—however excellent—from workers in other professions that the political scientist most satisfactorily fills his rôle in governmental theory; it is as the evaluator of general political principles and the interpreter of these principles in terms of practical action.—George C. S. Benson.

The Administration of the Civil Service in Massachusetts, with Special Reference to State Control of City Civil Service (Harvard University Press, pp. xiv, 90), by George C. S. Benson, demonstrates that during its half century of existence in Massachusetts the merit system has fostered the development of entrenched inefficiency. This indictment is based primarily upon evidence showing that organized groups of public employees in the state, by sponsoring special privilege legislation and by blocking progressive measures designed to improve standards of personnel administration, have subordinated the best interests of the public service to their own selfish ends. The active participation of civil servants in pressure politics, in which all the evils of favor-trading and log-rolling have appeared, is attributed to their failure to develop a professional spirit that would exalt the public interest above the proprietary interest in public employment. The author believes, furthermore, that "state administration of local civil service has not resulted in the highest type of municipal administration, but has caused much administrative friction and political unpopularity for the merit system." Here the blame rests largely upon the state civil service commission, which has failed to provide the vigorous leadership that an effective system of personnel administration requires. The commission, like the state legislature, has been especially attentive to the demands of public employee groups, and under their influence it has become a "watchful duenna of employee rights." The general effect has been to place local personnel standards throughout the state upon a uniform level of mediocrity. Personnel conditions in some of the worst governed cities have been improved at the expense of high standards in the better governed cities. This criticism substantiates a similar charge leveled at the recruiting practices of the commission in the recent survey of criminal justice in Boston conducted by the Harvard Law School. Mr. Benson recommends a number of changes in administrative methods, the most significant of which is the suggestion that the direct administration of local personnel work be placed in the hands of the local authorities. One is led to the conclusion, however, that substantial improvement cannot be achieved until the merit system is freed from its subservience to partisan group interests.—PAUL T. STAFFORD.

Challenging the defense-mechanism of his fellow-citizens reflected in "a public attitude that shrinks from dissemination of facts" (p. 156), James Karl Coleman's *State Administration in South Carolina* (Columbia University Press, pp. 300) provides excellent material for the "free discussion of the state's social and economic problems." That solution of these problems depends on a thorough reorganization of the agencies for administering the public business is demonstrated by detailed surveys. A mass of data concerning past and present operation of the state's administrative services is analyzed intelligently and proposals for improvement are presented concisely at the conclusion of each phase of the study. Perhaps "the dogmas of administrative reform" are too readily accepted in proposing "to make the governor the actual and responsible head" (p. 24), after admitting that, in the granting of pardons, "there is much evidence of abuse of this absolute power in the hands of the governor of South Carolina" (p. 23). However, by limiting the governor to appointments for overlapping terms on boards for such departments as education, public welfare, and highways—which boards, in turn, select the departmental executives—a substantial restriction would be placed on the governor's power. Dr. Coleman may have an inarticulate doubt concerning the proposed plan for recruitment and promotion of civil servants (Chap. XII), since he excepts from its operation the subordinate officers and employees of the state's educational institutions (p. 31). There must be something wrong with principles that are prescribed for all administrative services but our own. Also, clearer perception of realities inherent in the separation of powers should induce political scientists, including the author of this splendid monograph, to adopt a less optimistic attitude toward the scheme to empower members of the governor's cabinet to introduce bills and take part in legislative discussions. Finally, to substitute biennial for annual sessions (p. 183) overlooks the need for more, rather than less, frequent meetings in order that the legislative supervision over the proposed more centralized administration may be effective.—HOWARD WHITE.

Populism in the Old Dominion (Princeton University Press, pp. xiv, 182), by William Dubose Sheldon, is a thoroughly interesting and generally accurate story of the Populist movement in Virginia. It is the first extensive study of this movement in a border state. In six well-balanced chapters, the author shows clearly the economic and political background of Populism in the Old Dominion, paints an interesting picture of its leaders, shows how and why the movement was absorbed by the Democratic party in the campaign of 1896 and the reasons for its rapid decline after that campaign. The two major causes assigned for the rise of Populism in the Old Dominion are economic distress, particularly in the seventeen southside counties, and the enthusiasm aroused by the Farmers' Alliance. The chief reason, among others, for its decline was that the regular Democrats, in the face of the Populist threat, accepted almost completely its program. The leadership in both movements was made up of gentleman-farmers of the most respectable type. As one of the possible reasons for the Populist failure, Mr. Sheldon admits that "in Virginia, and this may have been a weakness, the Alliance produced no "Pitchfork Ben" Tillman, no fiery Tom Watson; its leaders were men of property and background, intelligent and only occasionally radical." One is inclined to suggest that this fact deserves more emphasis than Mr. Sheldon has given it. Such names as Page, Cocke, and Ruffin do not suggest radicalism. This Princeton senior thesis is indeed "a real contribution" to the literature of Populism, as Professor Wertenbaker in his Introduction suggests. It is a study of which both Mr. Sheldon and the department of history of Princeton University may well be proud. The reviewer was impelled to exhibit it to his undergraduate class in political parties with the exhortation "Go thou and do likewise."—GEORGE W. SPICER.

In David Harold Kurtzman's *Methods of Controlling Votes in Philadelphia* (University of Pennsylvania Press, pp. 173) and Charles Hickman Titus's *Voting Behavior in the United States* (University of California Press, pp. 74), we have two widely different approaches to the study of political behavior. The first, a doctoral dissertation, with the usual characteristics of its species, describes the Philadelphia Republican machine, supplementing Professor Salter's remarkable study of ward leaders, *Boss Rule*. Kurtzman's account is valuable chiefly because of its facts, for its interpretation adds nothing. The author confesses that it is still necessary to determine the economic and social forces behind the machine. He might well study the machine as a private competitive business, dealing in votes, where rugged individualism has not yet been regimented. "Service" to customers is its technique—patronage its compensation; efficiency (in getting votes) is rewarded; the merit system—consisting in serving hierarchical superiors—is at a premium. The usual palliatives of political science, such as improved registration of voters, the merit principle, etc., are offered. Perhaps the "service" of the politician would be less in demand if adequate social legislation, properly administered, were to be put into effect. Professor Titus continues his arduous studies of American political voting behavior in an optimistic pursuit of elusive "laws" of political science. He plows deep the slippery sod of voting statistics, but notwithstanding zealous and prodigious effort, the stubborn earth produces a meagre crop. No new laws are discovered, only summarizations, which, with striking regularity, coincide with arm-chair speculations and visceral "hunches" of astute politicians. His chief conclusions are: there are certain rhythms in voting behavior; woman suffrage has not doubled the vote cast; relatively fewer persons vote in big cities than in hamlets; more voters participate in the choice of executives than of legislators and judges—hence a tendency toward one-man government. The validity of the conclusions depends upon what a "vote" means. If Kurtzman's view is correct, a Philadelphia "vote" signifies nothing save loyalty to the machine.—J. B. SHANNON.

All students of American government are indebted to Professor Leonard W. Labaree for his excellently edited *Royal Instructions to British Colonial Governors, 1670–1776* (2 vols., D. Appleton-Century Co., pp. xxv, 462; ix, 463–937)—a fundamental work which gives, virtually *in extenso*, the voluminous instructions, both special and general, for the North American and island colonies, excepting Newfoundland. Of the origins of the instructions, Mr. Labaree says that, although issued in the king's name, they "were normally prepared by the Board of Trade, after extensive consultation with other governmental officials, with English merchants engaged in colonial trade, and with leading colonials temporarily in London .... They were submitted in draft form to the Privy Council and reviewed by its committee before receiving formal sanction and the authentication of the signet and sign manual." The documents are indispensable to the study not only of British colonial policy, but also of the genesis of American federalism: the very categories of subjects—justice, military affairs, Indians, commerce, land, currency, maritime affairs, and external relations—indicate that the imperial problem of the relations between the colonies and the English government was analogous to the federal problem of the relation between the states and the general government. So also the instructions pertaining to the governors, councils, legislation, and revenues give insight into the historical background of colonial-state institutions. Perhaps the most significant trend disclosed by the collection is the increasing importance of the colonial land question. It occasioned more development in British policy than any other problem; after 1720, particularly, it occupied British officials. One of the most important instructions, too little known, is the "rules for the sale of land," issued in 1774 (Vol. II, pp. 533–37). The ingenious, careful, space-conserving method employed by Mr. Labaree for collating the texts greatly facilitates the comparative study of colonies and subjects.—CURTIS NETTELS.

In his *Pennsylvania Constitution of 1776; A Study of Revolutionary Democracy* (University of Pennsylvania Press, pp. x, 280), J. Paul Selsam reaches the generally accepted conclusion that the American Revolution was as much a revolt against the aristocratically controlled colonial governments as against Great Britain. Written for the most part from primary sources, with detailed citation of authorities, the account of the Pennsylvania movement furnishes a valuable addition to the literature of this field. The Pennsylvania assembly had instructed its delegates to the Continental Congress to dissent from any measure leading toward separation from Great Britain, and a movement for independence meant a revolt against the established government. The workers, artisans, and mechanics of Philadelphia were denied any participation in the government. The under-represented back counties were unable to secure a redress of their grievances of long standing, principally in regard to taxation and protection against the Indians. Under the impetus of the Revolutionary movement, these elements were able to unite, force a change of instructions to the delegates, and adopt a new constitution then regarded as extremely democratic. The democratic movement split the revolutionary party, and Pennsylvania was able to put only a small portion of its available man-power in the struggle against England. The author makes the usual assumption that a popular movement against an entrenched aristocracy is necessarily a democratic movement—an assumption yet to be proved. In the American colonies, however, it undoubtedly was such. The book would have been strengthened if more space had been given to the source of the democratic theory and to an analysis of the character of the democratic movement.—FRANK PADDOCK.

The seventh volume of the *History of the State of New York* (Columbia University Press, pp. vii, 385), edited by Alexander C. Flick, covers political developments in the Empire State from 1850 to 1935. Its subtitle, *Modern Party Battles*, is unfortunate, since less than half of the book deals with political struggles. Two essays on early nineteenth century immigration, by Richard J. Purcell, clearly show the heterogeneous make-up of the future electorate of the state, although possibly too much "clerical" detail is offered on the Irish. A mass of somewhat bewildering but scholarly detail on leaders and policies has been condensed into the chapter on "Politics and Slavery, 1850–1860," by Dr. Philip G. Auchampaugh. A fine discussion of "New York and the Civil War," by Milledge L. Bonham, Jr., is followed by two pointed but sketchy chapters on New York politics from 1870 to 1914, by Edwin P. Tanner. The remainder of the volume includes two informing chapters on state constitutional and administrative developments since 1867, by Finla G. Crawford, and an interesting and complete description, by Alexander C. Flick and Peter Nelson, of the administrative techniques and machinery used in the mobilization of the state's resources during the World War. As a political history of the period, the work misses an opportunity to revise the standard monograph on the subject by D. S. Alexander. A more thorough presentation of personalities and problems in the years since 1880 would have been very welcome.—ALBERT V. HOUSE, JR.

During the past year, the American Civic Association and the National Conference on City Planning have merged. *The American Planning and Civic Annual* (American Planning and Civic Association, Washington, D. C., pp. xii, 356) is the year-book of the new organization. The volume is of special interest since the orderly development of the physical environment has been receiving increased attention in recent years. There are three sections in the volume, dealing with national, state, and city planning. Approximately the same amount of space is devoted to each type. The needs, objectives, methods, and accomplishments are considered in each case. Many of the papers are addresses selected from the Conference on City, Regional, State, and National Planning and from the National Conference on State Parks—both held during 1935. The average length of the papers is four pages, with many covering only two or three pages. The contributions which can be made to the subject of planning in such limited space are restricted, and fewer papers specially written for such a volume would seem to be more valuable.—CHARLES M. KNEIER.

FOREIGN AND COMPARATIVE GOVERNMENT

Herman Kantorowicz's *Dictatorships*, a stimulating article reprinted by Heffer and Sons from *Politica* (August, 1935), is intended to provide a typological framework for the eventual construction of a sociological theory of dictatorships. As a working concept, the author suggests that any government which operates independently of the consent of the governed (not necessarily in a legal, but in a sociological sense), which employs both negatively and positively the techniques of coercion (suppression of free discussion and political opposition, control of propaganda, excessive use of patriotic symbolism, secret police, etc.), and which succeeds a less autocratic or less illiberal régime, may be called a dictatorship. Contemporary dictatorships are analyzed in terms of this definition, with a view to establishing a classification of types, as, for example, personal or collective; military, party, or administrative; monistic or pluralistic. All of which is an ingenious and suggestive approach; but in admitting, as he must, that these types intersect in various ways, Dr. Kantorowicz appears to run into some confusion. This is illustrated by the statement on one page that Italian fascism is a "personal party dictatorship" and on the next that it "was pluralistic from the beginning and will probably remain so." It is obvious that considerable refinement of analysis will be necessary in order to fit such classifications into an integrated theory. An extensive bibliography on contemporary dictatorships, including all the lesser ones, which is appended to the article, will be welcome to all students of comparative government.—WALTER R. SHARP.

Supreme Court members should orient themselves by thinking through the theoretical problems raised in Karl Pribram's *Cartel Problems; An Analysis of Collective Monopolies in Europe, with American Applications* (Brookings Institution, pp. 287). This is a theoretical study of the problem in relation to European experience and the NRA experiment. "Cartels are combinations of independent producers or sellers of raw materials or manufactured commodities established with a view to limiting the individual risks involved in their business activities by controlling the markets of their products." They are generally ruled by the idea of the over-capacity of an industry to supply the needs of its market, and are to be distinguished from price associations which guarantee no place in the market. Cartels may be based on restriction of output, adjustment of sales quotas, the use of joint sales agencies, regional allotment of markets, rationalization of production and sales and standardization in industries producing complex products, rationing of bidding for contracts, etc. Aspects of cartel policy in relation to outsiders, to exports, to prices, are discussed; and cartel policy is contrasted with that of unified combinations. A difficult problem is that of the economic effects of cartels—their relation to industrial stability, the business cycle, and international trade relations. Dr. Pribram proceeds cautiously but critically. Two long chapters treat of cartels and the state, and codes and cartels—NRA policy. The state may pursue an "atomistic" policy—or that of the American anti-trust laws; or it may encourage voluntary cartel organization with some degree of state regulation; or it may adopt a policy of compulsory cartelization. The NRA objects of increasing purchasing power and spreading employment were not cartel policies, but by reason of the same forces at work here as abroad, pressure toward cartelization took effect in and through the NRA. The appendix contains a résumé of the cartelization movement in Europe.—HARVEY PINNEY.

In *Reconstruction in China* (China United Press, pp. xiv, 400), T'ang Leang-Li has given us a picture of the National Government's efforts to better the living conditions of the people. The book tells the story of progress made in the face of great difficulties. Mr. T'ang is perhaps a bit optimistic in his report of actual accomplishments, but as a record of attempted activity, and of dreams of things to come, his chapters are excellent. One might wish for more detailed comparison in his figures, but this is too much, perhaps, to expect from a partisan author who feels the pulsating vitality of new ideas. One senses the author's suppressed excitement as he contemplates the regular air-schedules linking the remote provinces with the capital. We rejoice in the figures showing the improvement in public health, and sympathize with him at the failure of government officials to live up to their oath of office. The recital of the attempts at "rural rehabilitation" brings a vivid sense of the overwhelming inertia to be overcome if China is ever to approximate Western standards. For those who are interested in the "growing pains" of a lustily revived nation, the book is eminently worth while.—ANDREW E. NUQUIST.

To set out succinctly the salient features of the Government of India Act, 1935, in their proper historical setting is the aim of J. P. Eddy and F. H. Lawton in their *India's New Constitution* (Macmillan and Co., pp. 239). The description is brief, and probably as clear as an exposition of a constitution which is still largely a paper instrument can be. Of historical setting, there is very little. While most of India's constitutional problems receive consideration, a few important ones, such as inter-empire relations and foreign affairs and the military problem, receive only mention or are not touched upon at all. It has been said that to the logically minded the constitution of the British Empire yields few secrets. This is apparently true also of certain features of the new Indian constitution, especially as explained by the authors. "The existence of the Crown's paramountcy," they state (p. 21), "and its varying relations with particular states in no way derogates from the sovereignty of the states." However, excursions into theory are rare. For students of Indian and comparative government, the book may serve as a convenient introduction to the main features of India's new constitution, but beyond that its uses are limited.—A. VANDENBOSCH.

All students of Latin America will welcome *Who's Who in Latin America* (Stanford University Press, pp. xxiv, 438), edited by Percy A. Martin, as a biographical dictionary of the leading living men and women of Spanish America and Brazil. The book embodies the first attempt to furnish a comprehensive reference volume of the sort. The sketches are as a rule based on information reviewed by the individuals discussed. In some cases, the statements appear in the form of short essays submitted by those concerned. Where direct replies have not been obtainable, the editor has drawn the facts from secondary material where that has been of acceptable character. Dr. Martin and his assistants are to be congratulated on an excellent effort in a pioneer field. It is to be hoped that the volume will be followed periodically by others which will keep the material up to date.—CHESTER LLOYD JONES.

INTERNATIONAL LAW AND RELATIONS

In *A Critical Study of the First Anglo-Chinese War* (Shanghai: The Commercial Press, pp. 315), Dr. P. C. Kuo, professor of history, National Wuhan University, Wuchang, attempts a fresh evaluation of the events and conditions precedent to and accompanying the war which resulted in the treaties of Nanking, the Bogue, Wanghia, and Whampoa, 1842–44. Critical of the "works of such men as Eitel, Morse, and Eames" on the grounds of "the authors' lack of critical acumen" and "the limited scope of the source material available at the time they wrote," Dr. Kuo, nevertheless, leans somewhat heavily upon the sources used by them and comes to conclusions not as divergent from theirs as might be expected. In an excellent chapter on authorities, Chinese and non-Chinese, attention is directed in particular to *The Political Works of Lin Tse-hsü; Tung Hua Lu*, or "Annals of the Reigning Dynasty;" *Tung Shang Shih Mo Chi*, or "The Beginning and End of Foreign Trade;" *Ching Shih Kao*, or "The Draft History of the Tsing Dynasty;" and *Ch'ou Pan Yi Wu Shih Mo*, or "The Beginning and End of the Management of Barbarian Affairs," especially the section dealing with the Tao-kuang reign. Of the last, fifty-six documents of outstanding value are translated by Dr. Kuo, incorporated in a section of 105 pages, and cited in the text supplementary to authorities in the English language. Participation in the opium trade by others than the English is all but ignored. The character of Commissioner Lin is analyzed and, in general, vindicated, as it has earlier been by Western historians, who, on the whole, have not been as adversely critical of Lin as is here implied. Dr. Kuo's study is objective in tone, and its outstanding contribution is the body of translations above-mentioned.—H. F. MACNAIR.

John Gilbert Reid's scholarly analysis of power politics in China—*The*

Manchu Abdication and the Powers, 1908–1912 (University of California Press, pp. xiii, 497)—appears opportunely as the latest phase of Japanese imperialism is forcing Occidental governments to reconsider the implications of the open door policy. Based principally upon the published documents of the British, French, German, Russian, and American foreign offices, the study is a skillful chronological synthesis of these materials with others drawn from contemporary biographies, memoirs, monographs, and periodicals. It is elaborately indexed, provided with a useful sketch map, and attractively printed and bound. One regrets indeed that a cheaper edition is not available, since the book is essentially one for scholars. For the same reason, it seems unfortunate to print the footnotes, which are numerous and extensive, after the text. The core of the work is a clear and interesting presentation of the diplomacy, both official and private, relating to the Hukuang and Manchurian railways. Nowhere else has the struggle of the Taft-Knox-Straight triumvirate against British financial power in the Yangtze basin, and against Russo-Japanese determination to monopolize Manchuria, been so fully recorded. Nor has it been possible hitherto to appreciate so well that it was not Sir Edward Grey but the Kaiser who wanted to aid Knox and implement the open door policy. If the tenacity and ineptitude of Secretary Knox were already realized, Dr. Reid has added considerably to our comprehension of the effects of his *methods*—not, as the author puts it, of his *policy* (p. 42)—upon the tottering Manchu throne. That a program designed to strengthen the government had the indirect result of weakening it is a fact that calls for consideration today. Although not stated affirmatively, the author's opinion appears to be that none of the Powers consciously sought to weaken the dynasty—that, on the contrary, all of them were surprised by the outbreak of the Revolution. When he concludes, therefore, that the Powers "pushed" Peking into catastrophe (p. 255), he might better have written "jostled." It must be said that the title of this book calls for more direct and detailed proof of the fatal effects of the inter-Power struggle for the profits of investment upon the domestic politics of China. For that, it would be necessary to use Chinese sources, both for the attitudes of Peking officials and for provincial and revolutionary sentiment.—HAROLD S. QUIGLEY.

The scarcity of scholarly works on the Near East has been partially due to the lack of sound research on specific problems. *International Economics and Diplomacy in the Near East* (Stanford University Press, pp. xiii, 264), by Vernon John Puryear, supplies this deficiency for British policy in the Levant from 1834 to 1853. In this well-documented study, the author achieves an intelligent synthesis of the economic and political history of the period. The study is particularly significant in demonstrating the economic basis of the Eastern Question and the economic causes of the Crimean War. In examining the rivalry of Great Britain and Russia in the Near East for two decades, Mr. Puryear studies the interests of each Power and their treaty relations with Turkey from 1834 to 1838 leading to the establishment of virtual free trade in Turkey. The importance of the aims of Mehemet Ali of Egypt at this time are shown in their true significance, and the Turco-Egyptian war and its effects on the Eastern Question, particularly the problem of freedom of the Straits, is ably demonstrated. It is in his research on the economic aspects of British policy that the author has made his chief contribution. The reports of various British agents and their personal influence on those in command of foreign policy emphasize the value of continued study in this aspect of international politics. The causes of the Crimean War appear more sharply defined in the light of the commercial interests of Russia and Britain in Turkey. The interest of other Powers, notably Austria and France, in the Eastern Question is not lost sight of, and research in original sources has added to the value of the author's comments. The general quality of this study is marred by the author's closing statement that "the British support of Turkey postponed the solution of the Near Eastern Question, providing one of the darkest blots in the nineteenth-century diplomatic history of Europe." This kind of moralizing about any phase of international politics which has been notable for its lack of an ethical system serves no useful purpose. The author's conclusions are not new, but they reveal more clearly than heretofore the importance of commerce in the political phases of modern Near Eastern history.—WILLIAM C. JOHNSTONE, JR.

Article 2 of the Pact of Paris obligates its signatories never to seek the settlement of disputes between them except *by pacific means*. Professor Manley O. Hudson took the last phrase as the title for a series of four lectures delivered at the Fletcher School of Law and Diplomacy at Tufts College in March, 1935. Under the same title, the lectures were subsequently published in book form (Yale University Press, pp. 200), along with the texts of the more recent and important multilateral agreements bearing on the subject. Professor Hudson's treatment of the machinery of pacific settlement fills about half the volume. He deals in turn with the law of pacific settlement before 1914, the contributions of the League of Nations, the work of the Permanent Court, and post-war treaties for pacific settlement. Since he is expressly concerned with the description of political mechanisms and legal obligations, it would be unfair to complain that the analysis does not go beyond this. The author is himself fully aware that complex mechanisms and solemn obligations do not, of themselves, insure peace. "If nations will resort to violence, if the forces of unreason will be allowed to prevail, it will not be because methods and agencies are unavailable for escape from such a course. The improvement of these methods and the creation of these agencies are among the great achievements of our generation" (pp. 95–96). In the face of these indisputable facts, the world faces not peace, but war. The answer lies not in the imperfection of mechanisms and obligations, but in the static character of international public law as it applies to components of power. It lies in the refusal of the beneficiaries of the *status quo* to make timely concessions to the unsatiated. Today it is too late. The unsatiated have gone mad and become unsatiable. Fascism repudiates peace, glorifies war, and sneers at the mechanisms and obligations of pacific settlement. Peace now depends upon overwhelming force mobilized against the Fascist Powers. The League and other agencies of peace are already playing a rôle in such mobilization. But this new function of the peace machinery tends to escape the jurist who does not also examine the processes of politics beneath the surface of law and administration.—FREDERICK L. SCHUMAN.

The careful studies of American foreign relations prepared by the Council on Foreign Relations since 1931 perform a valuable function as first drafts of contemporary history. Whitney H. Shepardson and William O. Scroggs, in *The United States in World Affairs in 1934–1935* (Harper and Brothers, pp. xiii, 357), have presented an account of the essential facts that is fresh, readable, and at times delightfully entertaining, yet none the less balanced and informative. For the student, the documentation, appendices, and selected bibliography will all be found useful. The brilliantly written introduction deftly combines two somewhat incompatible features: a searingly pessimistic analysis of the current revival of *Machtpolitik*, and a defense—not wholly uncritical, to be sure—of United States contributions to the settlement of post-war international problems. The early chapters on American policy relative to gold, silver, stabilization, foreign debts, and trade strike a melancholy balance of accounts for the period under review. In this economic sphere, the single hopeful feature appears to be the trade reciprocity program—since extended still further by the treaties with Canada and the Netherlands. The authors look favorably, perhaps too much so, on the results of the "New Deal" for Latin America. They criticize the economic injustices of the Philippines Act, and place a question mark beside its ultimate international effects. Two chapters stress the continuing breakdown of the key features of the Washington Conference agreements—open door, integrity of China, naval limitation—and the emerging, but not yet certain, Anglo-American collaboration to defend interests threatened by Japanese expansion. The concluding chapters stress a contrary tendency of American policy. In Europe, the collapse of Versailles has led to feverish rearmament, as well as to the strongest effort yet made by European Powers to "put teeth" in the Covenant. Faced by the war threat in Europe, the United States reacts toward neutrality based on partial isolation.—T. A. BISSON.

As the title suggests, *Disarmament in British Foreign Policy* (George Allen and Unwin, Ltd., pp. 432), by Roland A. Chaput, analyzes the position of Great Britain on disarmament and examines the rôle that this problem has played in the general scheme of British foreign policy since 1919. In an interesting introduction, Mr. Chaput lays the foundation for the main body of his work by tracing the historical and geographical background of British armaments policy. He points out that peace, for both economic and political reasons, has become indispensable to the continued existence of Great Britain and the British Commonwealth of Nations. Britain needs sea-power to assure security and trade protection. This power has traditionally been maintained in three ways: (1) by naval supremacy; (2) by the policy of keeping the Low Countries in friendly hands; and (3) by the balance of power in Europe. The main body of the book provides a well documented study of British policy in regard to naval, land, and air armaments. Mr. Chaput successively deals with the technical problems involved in each of these three aspects of disarmament. His examination is objective, and he has not overlooked the influence of general political developments in England or the world at large. In conclusion, Mr. Chaput contrasts the relative effects on British foreign policy of unilateral disarmament and international disarmament. Unilateral disarmament weakens the relative strength of British diplomatic bargaining power and decreases the ability of British foreign policy to keep peace and safeguard essential British interests. International disarmament which crystallizes the *status quo* in diplomatic power might prove more effective in preserving essential British principles. International disarmament must depend, however, on an international system based on law. The book contains a well-organized bibliography of fifty-five pages, indispensable to future students of the subject.—WINCHESTER H. HEICHER.

The St. Lawrence waterway treaty, signed in 1932 by representatives of the governments of the United States and Canada, has not been ratified, but the navigation and power project with which it deals is by no means a dead issue. C. P. Wright's *The St. Lawrence Deep Waterway* (Toronto: Macmillan and Co., pp. xx, 450) contains an excellent study of the making of the treaty, a careful analysis of the economic aspects of the project, especially from the point of view of Canadian interests, and a sharp criticism of the treaty provisions, again primarily from the

Canadian side. The discussion of the events leading to the making of the treaty will be of particular interest to political scientists. The author traces in some detail the course of investigations carried on from 1920 up to the signing of the treaty. Although careful engineering studies were made, it does not appear that any agency, American or Canadian, ever made a really thorough investigation of the economic feasibility of the project. A rather remarkable organization, the Great Lakes-St. Lawrence Tidewater Association, which was virtually dominated by one man, found little difficulty in convincing government agencies in both countries of the economic advantages of the waterway. Those interested in pressure groups will find the tactics of this Association worthy of attention. The author is convinced that there is an economic justification for the project, but he is likewise convinced that it does not lie in any of the arguments advanced by the Association or by the government commissions which investigated the project. He is of the opinion that many of the treaty provisions would be modified if the two governments were to make a really careful investigation, based on more objective considerations than those provided by the Tidewater Association.—HUGH L. ELSBREE.

In Great Britain, W. E. Hall's *International Law* is running in its eighth edition; so is A. W. Heffter's *Das Europaeische Völkerrecht* in Germany; also H. Bonfils, *Traité de droit international public* in France. Occupying a comparable position in the United States, George Grafton Wilson's *International Law* (Silver, Burdett and Company, pp. xxvi, 530) appears in its eighth edition. It is dedicated to George Fox Tucker, who was originally a co-author. The book has been thoroughly revised and brought up to date. The naturalization act of 1934, the latest references on *rebus sic stantibus*, the Eastern Greenland case, and the development of international law since the Great War are included. Throughout, the treatment shows admirable proportion, succinctness, and accuracy of statement. It would be difficult to find a better digest of the rights and obligations of neutrals. Contrary to the conception of some writers that there is no international law of war, Professor Wilson reveals that a considerable part of international law has to do with the regulation of the conduct of hostilities and with the solution of differences that grow out of war. The texts of documents cited frequently are given in the appendices with the avowed "conviction that it is more serviceable to read the documents than to read lengthy opinions upon what the documents may mean, and also in order that the whole text may be available for reference." Among these are Lieber's *Code of Instructions for the Government of the Armies of the United States in the Field*, the Hague Conventions of 1907, the part of the Criminal Code, 1909, pertaining to offenses against neutrality, the Covenant of the League of Nations, and the Convention of Geneva, 1929, for the amelioration of the condition of the wounded and sick of armies in the field. Not infrequently has the Supreme Court, in decisions pertaining to international law, referred to earlier editions of this work. Lawyers will therefore find the book of interest. Particularly useful will it be to students of the subject and to general readers.—CHARLES E. HILL.

A Tender of Peace (Columbia University Press, pp. 57), by John Bates Clark, is an eloquent appeal for the banishment of the "war demon" through "defensive coöperation" among the nations of the world. War is regarded as "a terrible possibility," yet, in the lofty spirit of Immanuel Kant, the author urges that reason and nature are on the side of international law and order. "The political world is becoming a natural peace society," and "we can now for the first time entertain a reasonable hope that within the pale of civilization warfare will be generally suppressed." Aggressions can assuredly be "identified, exposed, and effectively resisted" (this vital point is not elaborated), and "potential resistance to aggression is the ordained peace-preserving force." Professor Clark points out that treaties do not necessarily entangle. They may also liberate, and the League of Nations, in his view, is of this latter category.—G. BERNARD NOBLE.

The China Quarterly, the first issue of which appeared in September, 1935, is published in Shanghai, under the joint auspices of the China Institute of International Relations, the Pan-Pacific Association of China, and the Institute of Social and Economic Research. Editor Y. S. Tsao, in his foreword to the first issue, announces that the *Quarterly* is to serve as a medium for the publication of facts and the expression of opinions tending toward the ultimate solution of the social, political, and economic problems peculiar to the nations that surround the Pacific.

POLITICAL THEORY AND MISCELLANEOUS

Most books dealing with the state are rather dull and elaborate efforts to rationalize or idealize it. Some treat it systematically and descriptively. Some glorify it as a transcendant personality in whose service man finds his highest expression. Some condemn it as an instrument for legalizing plunder, conquest, and exploitation. Albert Jay Nock's *Our Enemy, the State* (William Morrow and Co., pp. i, 209) finds its historical origins in such violence and its present development and activities in American civilization parasitic in character. Along with the host upon which it preys and which it will destroy, it is doomed. The author makes a distinction between social power and state power. The latter is increasing; the former is decreasing. Power seized by or bestowed upon the state cannot be recovered. The devices of popular rule but cultivate the illusion of continued control. For Mr. Nock, the future holds little or no hope of society recouping its losses of power to the state. What the author has to say about the state's lack of concern for the individual *qua* individual is true enough. But so it has ever been with all human institutions. Whatever form group life takes on, the individual is ever the sacrifice in behalf of group survival. The Chinese have known no state in the Western sense; there it is the family group which survives by putting the individual in servitude to his ancestors. Group life recognizes the individual only as an asset in its own struggle for existence. Mr. Nock's real quarrel is not with the state; it is with man. Man builds his institutions in the hope of escaping his dilemmas; in turn, they prey upon him and his children, in the end to their mutual destruction. The fact that man forever builds again is its own justification. Life needs no argument, either as "enemy" or as that which calls forth "the full measure of devotion."—RUSSELL M. STORY.

Volume X, entitled *L'État Moderne*, of the *Encyclopédie Française* now being published in twenty-one volumes (7 rue du Four, Paris) has recently appeared. It deals in the main with the territorial, human, and other elements which constitute the state; its activities, functions, and instrumentalities; the sources of, and limitations upon, its power; its organs; the various types of states; and the new forms of the state such as are found in Germany, Italy, and Russia. Volume XI will deal with the state in its international aspects: diplomatic instrumentalities, wars, international organizations above the state, etc. Each volume is divided into a number of chapters (there are twenty-nine chapters in Volume X), each chapter representing the contribution of a distinguished scholar in the particular field with which the chapter deals. The authors are drawn from different countries, although naturally those from France are largely in the majority. The editors are to be congratulated on their success in enlisting the coöperation of nearly every French scholar of note in the field of political science and public law. Altogether, the encyclopedia will be a notable one, and the volumes devoted to the state will represent an important encyclopedic contribution to the literature dealing with the subject in its varied aspects.—JAMES W. GARNER.

On the basis of a true-false test of twenty questions on the League of Nations, the tariff, and compulsory arbitration of labor disputes, filled out in the years 1924 to 1927 by 1,250 voters, 960 of whom lived in the state of Kansas, Professor Seba Eldridge presents the book, *Public Intelligence* (Bulletin of the University of Kansas, pp. viii, 101). The subtitle of the monograph is much more accurately worded than the title, *A Study of the Attitudes and Opinions of Voters.* The author admits in a number of places that he may be measuring social conditioning rather than native traits. A fundamental weakness in the analysis is that the criterion is not well established. There are a few vague remarks about the judgment of experts regarding the "true" answers to the questions given, but it is apparent that many of the questions are statements of opinion and not statements of fact. It is unfortunate that a study which involved so much labor should be built on so shaky a foundation. However, if the reader substitutes the term "social-mindedness" for "political intelligence," some of the results can be salvaged. What the author appears to be measuring is favorable attitudes toward the League of Nations, free trade, and the labor point of view. Considering favorable attitudes as high, Professor Eldridge finds little difference between the sexes; marked differences between occupational groups, with the farmers, non-manual workers, and business proprietors at the lower end of the scale and the professional groups at the other; a positive correlation with schooling, particularly that beyond high school; no correlation with the number of newspapers read, but some correlation with the number of periodicals read, with the highest score obtained by the readers of the *New Republic* and the *Nation;* lowest scores obtained by Republicans, with the Democrats, Independents, and Socialists each surpassing the other groups in turn; a negative relationship with age; a positive relationship with mobility as measured by differences in birthplace and legal residence; and a negative relationship with identity with father's political preferences. On the industrial arbitration statements, the business proprietors had the lowest scores (negative, in fact). On the technical side, the study leaves something to be desired. The Thurstone scaling technique would have furnished a much sounder method for measuring attitudes on the questions concerned. Unorthodox correlation methods were used which exaggerated the closeness of relationships. Persons who disagree with the author's pessimism regarding the political intelligence of the sample of voters studied can still read his analysis with considerable profit. The chapter on family influences on political preferences is particularly valuable. The study shows the misinformation found in the daily press, particularly in the Middle West, which influences political attitudes.—HAROLD F. GOSNELL.

Fascism and Social Revolution; A Study of Economics and Politics of the Extreme Stages of Capitalism in Decay (International Publishers, pp. 320), by R. Palme Dutt, is a revised edition of a book published in 1934 and analyzed in the June, 1935, issue of this REVIEW. The only new feature that need be mentioned is an appendix, treating fascism and anti-fascism from June, 1934, to March, 1935. In it, the author summarizes the main characteristics of the period in the following words: "The outstanding development in the world of fascism during this period has been the signs of the first stages of a gathering crisis of fascism, and as the necessary accompaniment of this, the rapid intensification of the drive to war. The outstanding development in the camp of the opposition to fascism has been the advance of the united working class front" (p. 310). Of course, things are going on smoothly and inevitably according to the laws of Marxian dialectics towards war or social revolution, or both! In harmony with these laws, the author gives his unqualified blessing to the common front with the despised Social Democrats and all the *petit bourgeois* elements of society ordered by the Seventh Congress of the Communist International—even though in the first edition of the book Social Democracy was one of the major criminals in the fascist drama.—OSCAR JÁSZI.

The *China Year Book, 1935* (American Agent, University of Chicago Press, pp. xxiv, 627), edited at Shanghai by H. G. W. Woodhead, retains its standing as the most complete and usable reference work on contemporary China in the English language. Though reduced by some two hundred pages in size (and correspondingly in price: $10.00 U. S.), no statistical chapter has been omitted. Certain data on tariff rates and loans, not republished, are available in the volume for 1934. A new chapter is added on "China's Modern Industries." Among other excellent essays for which, as in past issues, this year-book is remarkable, are those on Mongolia and Chinese Turkestan, the mineral industry, conservancy, Christian missions, and education. The account of domestic and foreign politics is brought down to August, 1935, and the revised draft of the proposed constitution is printed. Although Manchuria is no longer treated as Chinese territory, space is found for the U.S.S.R.-Manchukuo agreement for the sale of the Chinese Eastern Railway. Not the least valuable and interesting section of the book is the "Who's Who," which contains brief paragraphs on nine hundred Chinese men and women.—HAROLD S. QUIGLEY.

As the title indicates, *The Fronde* (Harvard University Press, pp. xiii, 181), by Paul Rice Doolin, deals with that protest of Parlement, princes, and nobles against the growing absolutism of the French monarchy that absorbed the energies and resources of France from 1648 to 1653. In his first two chapters, the author gives a brief, clear account of the events of the period which adds some details not to be found in standard French accounts and which differs considerably in the emphasis placed on some of the episodes. They do not give a colorful picture of Paris in revolt or any feeling of the selfishness and littleness of the principal participants or of the confused nature of the struggle. The author makes his principal contribution in the four remaining chapters. In Chapter III, he sets forth typical declarations of the government and the opposition. In the last three chapters, he attempts to give the political theories of the two parties. In his effort to select the typical and to make a narrative marked by clarity, however, the author may have over-simplified a confused subject. The book has a good bibliography, but no index.—C. P. HIGBY.

In the ancient Greek world, the exclusive citizenship of the city state was a serious obstacle to imperialistic expansion. How the Romans began to solve the problem of citizenship in an empire composed to a large extent of city states is treated in detail for the Republic and early Empire by Charlotte E. Goodfellow in *Roman Citizenship; A Study of Its Territorial and Numerical Expansion from the Earliest Times to the Death of Augustus* (Lancaster Press, pp. 124). By illustrating fully the methods of the extension of Roman citizenship, the author shows how the Greek and early Roman conception of exclusive citizenship had partially developed by the time of Augustus into the idea, necessary for an empire, that Roman citizenship was consistent with membership in any city of the Empire. This thesis is presented in a good, well documented monograph, although the possible contribution of Stoicism to practical Roman statesmanship in the matter is neglected.—GAINES POST.

The New Commonwealth Quarterly, published in London by the New Commonwealth Institute, and edited by Harold Temperley, Georges Scelle, and Ernest Jäckh, made its initial appearance in April, 1935. "The aim of this journal," writes Professor Temperley, president of the Institute, "is to see things as they are, in the high and dry light of reason, of science, of law, and of history. . . . Charles Lamb used to stutter out 'I cannot h-hate a m-man I know,' and knowledge is the most important road to follow if we wish to understand another nation or to appease international strife. . . . Today more than ever we need freedom to speak our minds and the right to set truth before life." The *Quarterly* publishes articles in English, French, and German, as well as reports on current events, book reviews, and documents of international interest.—ROBERT W. RAFUSE.

The sixth edition of *Tax Systems of the World* (Commerce Clearing House, pp. 365), prepared under the direction of the New York State Tax Commission, indicates a continuing program of expansion. In the words of the introduction, the book "is aimed to be, first, an annual encyclopedia; second, a manual; third, a text-book; fourth, a source-book, and so, it is hoped, a whole library on taxation." Particularly interesting to the reviewer are the impressive compilations of administrative practices used by a wide variety of governmental units. A start has been made also toward the collection of expert opinion on tax systems and the elaboration of a model tax plan.—LEE S. GREENE.

RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CHARLES S. HYNEMAN
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AMERICAN GOVERNMENT AND POLITICS

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House of representatives. Civil service preference, retirement, and salary classification laws; comp. by Elmer A. Lewis, superintendent document room, house of representatives. Washington: Govt. Ptg. Off., 1935. 164 p.

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———— *Foreign relations committee.* Munitions industry, hearings . . . parts 18–20 . . . Washington: Govt. Ptg. Off., 1935. 4519–5711 p. (These sections relate to naval shipbuilding and to the New York Shipbuilding Corporation.)

Library of congress

Guide to the diplomatic history of the United States, 1775–1921; by Samuel Flagg Bemis and Grace Gardner Griffin, Washington: Govt. Ptg. Off., 1935. 979 p. (This work has been needed by the research worker in the field of foreign relations. It is well done).

State department

Admission of aliens into the United States, supplement A of consular regulations, notes to sec. 361; revised to January 1, 1936. Washington: Govt. Ptg. Off., 1936. 174 p.

———— Supervision of international trade in arms, convention for supervision of international trade in arms and ammunition and in implements of war. Washington: Govt. Ptg. Off., 1935. 36 p. (This was signed June 17, 1925, but the injunction of secrecy was removed only on June 6, 1935.)

———— International traffic in arms, laws and regulations administered by secretary of state governing international traffic in arms, ammunition, and implements of war. 2d edition. Washington: Govt. Ptg. Off., 1935. 21 p. (Publication 794.)

The National Archives, recently established in its magnificent new building in Washington, will eventually become a place of research for scholars in United States history and government. So far, nothing has been issued by this office which could, strictly speaking, be called a government document, but so great has been the curiosity of scholars concerning the scope of the National Archives that a number of mimeographed articles, speeches, etc., have been prepared for distribution and may be had by writing to the director. The most comprehensive of these is a 15-page article by R. D. W. Connor, Archivist, entitled "Plans for the National Archives;" but there are numerous others by Mr. Connor and by Dorsey W. Hyde, Jr., director of archival service, which describe what is hoped to be done.

STATE AND TERRITORIAL

CALIFORNIA

University of California, Berkeley. Bureau of public administration. Governmental research organizations in the western states. A directory of agencies, and an index to their studies. Berkeley, 1935. xviii, 32 p., mim. (Western states research activity series, no. 1.)

GEORGIA

University of Georgia. Division of publications. Readings to accompany a course on contemporary Georgia, compiled by Malcolm H. Bryan . . . and Thomas J. Askew. Athens, 1935. 520 p.

ILLINOIS

Civil service commission. Classification of positions of the Illinois state civil service. Springfield, 1935. 194 p.

Historical library. Illinois census returns, 1810, 1818. Edited with introduction and notes by Margaret Cross Norton. Springfield, 1935. xxxii, 329 p. (Collections of the Illinois state historical library, vol. xxiv.)

INDIANA

Committee on governmental economy. Recommendations. Indianapolis, 1935. 40 p.

IOWA

State planning board. The income of the counties of Iowa. Howard Bowen, coördinator. Iowa City, 1935. 32 p. (mim.).

KANSAS

Legislative council. This council has published a number of "questions for legislative determination," involving the social security program. The subjects covered include old age assistance, aid for dependent children, maternal and child health, unemployment compensation, etc. Topeka, 1935.

University of Kansas, Lawrence. The teachings of Jesus and the treaty of Versailles, by Edgar Langsdorf. Lawrence, 1935. 28 p. (A prize-winning essay.)

MICHIGAN

Judicial council. The office of the friend of the court in Wayne county, Michigan (Detroit). A study in judicial administration, by Frank E. Cooper and John P. Dawson. Ann Arbor, Ann Arbor Press, 1935. 51–160 p. (Forms appendix to fifth annual report of the judicial council of Michigan.) This is a careful and detailed study of an important development about which very little has been written, and should be extremely useful to students of government and sociology.

NEW JERSEY

Rutgers University, New Brunswick. Viewpoints on economic and social issues and their relation to rural life. New Brunswick, 1935. 230 p.

NEW YORK

A model tax and revenue system for the state of New York. Tax bill, Senate int. no. 982, print no. 1095, and Senate int. no. 951, print no. 1051, establishing a board of municipal bond review, together with an explanatory memorandum supporting these proposals presented to the New York legislature in February, 1935, by Charles J. Tobin, of the New York state bar. Albany, 1935. 80, 300, 5 p.

Tax commission. Operation of debt and tax rate limits in the state of New York. A study of the constitutional limitations and their effects upon municipal finance, by Frank LeRoy Spangler, Albany, 1932. 247 p.

Temporary emergency relief administration, New York City. Aiding the unemployed. A survey of methods and trends in 24 foreign countries . . . by Hertha Kraus: New York, 1935. 104 p.

New York City charter revision commission. Outline of governmental organization within the cities of London, Paris, and Berlin, with explanatory charts, by Sarah Greer. Prepared . . . by the Institute of public administration, New York, 1936. 41 p. (mim.) charts. ("This study is the result of a request from the New York City charter revision commission for information concerning governmental structure and functions in the larger European cities, with special reference to the powers and duties of the chief executive and the relation of the district or borough governments to the central government.")

OHIO

Attorney-general. The government of the state of Ohio. An analysis of the various state departments, commissions, bureaus, and boards as of January 1, 1935. Columbus, 1935. 113 p.

Governor's commission on county government. Procedure for the reorganization of county government . . . Columbus, 1934. 8 p.

——— The reorganization of county government in Ohio. Summary of the report of the governor's commission . . . Columbus, 1934. 16 p.

OKLAHOMA

University of Oklahoma, Norman. The making of modern Iraq; a product of world forces, by Henry A. Foster. Norman, 1935. 319 p.

TEXAS

University of Texas. Bureau of research in the social sciences. A purchasing manual for Texas cities, by Lyndon E. Abbott. Austin, 1935. 120 p.

WASHINGTON

State planning council. Balance sheets of the state of Washington, volumes I and II, with supplements. Olympia, 1935. (Research publication no. 2.)

FOREIGN AND INTERNATIONAL

ARGENTINA

Universidad nacional de La Plata. Nuevas aportaciones para el estudio del regimen municipal Hispano-Americano del periodo colonial, por el Doctor José Ma. Ots. La Plata. 1934. 32 p.

GUATEMALA

Secretaria de gobernacion y justicia. Constitucion de la Republica de Guatemala, decretada por la Asamblea nacional constituyente . . . Guatemala, 1935. 172 p.

SOUTH AUSTRALIA

Local government commission. 1–5th and final report of the local government commission. Adelaide, 1932–35. 6v. in 1.

LEAGUE OF NATIONS

Dispute between Ethiopia and Italy; coördination of measures under article 16 of the Covenant. Coördination committee. Report of the committee of experts . . . Geneva, 1935. 7 p. (General 1935.10.)

Committee on international assistance to refugees. Report . . . to the Council. Geneva, 1936. 18 p. (XII.B International bureaux.1936.XII.B.1.)

Lettre de demission de James G. McDonald, haut commissaire pour les réfugiés (Israelites et autres) provenant d'Allemagne . . . Geneva, 1936. 38 p. (1936.XII. B.2. Bureaux internationaux.)

Conference for the reduction and limitation of armaments. Records . . . Series D, vol. 1, 4. Minutes of land commission; of national defence expenditure commission. Geneva, 1935. 128, 106 p.

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